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To improve the administration of export controls, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 8 (legislative day, FEBRUARY 22), 1994

Mr. RIEGLE (for himself and Mr. SASSER (by request)) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To improve the administration of export controls, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

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1 **SECTION 1. TITLE.**

2 This Act may be cited as the “Export Administration
3 Act of 1994” and shall hereafter be referred to as the Act.

4 **SEC. 2. FINDINGS.**

5 The Congress makes the following findings:

6 (1) Export controls shall be a part of a com-
7 prehensive response to national security threats.
8 United States exports should be restricted only for
9 significant national security, nonproliferation, and
10 foreign policy reasons.

11 (2) The proliferation of weapons of mass de-
12 struction, their delivery systems, and other signifi-
13 cant military capabilities has become one of the most
14 serious threats to world peace and to our national
15 security.

16 (3) Since growing exports are essential to fu-
17 ture economic growth, restrictions on exports must
18 be evaluated in terms of their effects on the United
19 States economy. Economic interests must play a key
20 role in decisions on export controls and the rigor of
21 economic analysis and data available in the decision-
22 making process must be enhanced.

23 (4) Exports of certain commodities, technology,
24 and software may adversely affect the national secu-
25 rity and foreign policy of the United States, by mak-
26 ing a significant contribution to the military poten-

1 tial of individual countries or by disseminating the
2 capability to design, develop, test, produce, stockpile,
3 or use weapons of mass destruction, missile delivery
4 systems, and other significant military capabilities.
5 The administration of export controls should empha-
6 size the control of exports that could make a signifi-
7 cant contribution to the military potential of any
8 country which would be detrimental to the national
9 security and foreign policy of the United States and
10 the control of items that could disseminate the capa-
11 bility to produce and use weapons of mass destruc-
12 tion, missile delivery systems, and other significant
13 military capabilities.

14 (5) The acquisition of sensitive commodities,
15 technology, and software by those countries and end
16 users whose actions or policies run counter to
17 United States national security or foreign policy in-
18 terests may enhance the military-industrial capabili-
19 ties of those countries, particularly their ability to
20 design, develop, test, produce, stockpile, use, and de-
21 liver nuclear, chemical, and biological weapons, mis-
22 sile delivery systems, and other significant military
23 capabilities. This enhancement threatens the secu-
24 rity of the United States, its allies, and other friend-
25 ly nations, and places additional demands on the de-

1 fense budget of the United States. Availability to
2 certain countries and end users of items that con-
3 tribute to military capabilities or the proliferation of
4 weapons of mass destruction is a fundamental con-
5 cern of the United States and should be eliminated
6 through negotiations and other appropriate means
7 whenever possible.

8 (6) The national security of the United States
9 depends not only on wise foreign policies and a
10 strong defense, but also a vibrant national economy.
11 To be truly effective, export controls should be ap-
12 plied uniformly by all suppliers.

13 (7) The United States export control system
14 must not be overly restrictive or bureaucratic, or un-
15 dermine the competitive position of American indus-
16 try. The export control system must be efficient, re-
17 sponsive, transparent, and effective.

18 (8) Export controls should be focused on those
19 items that materially contribute to a country's or
20 end user's military or proliferation potential. The
21 United States must pursue the maximum effective-
22 ness of multilateral export control regimes, including
23 comprehensive enforcement measures. The United
24 States recognizes the important of comprehensive
25 enforcement measures to maximize the effectiveness

1 of multilateral controls. Therefore, the United States
2 must level the playing field for United States trade
3 and enhance the effectiveness of controls by pursu-
4 ing multilateral controls and harmonizing their im-
5 plementation.

6 (9) Except in the event the United States is the
7 sole source of critical supplies, unilateral export con-
8 trols may not be truly effective in influencing the be-
9 havior of other governments and impeding access by
10 target countries to controlled items. Unilateral con-
11 trols may therefore impede access to United States
12 sources of supply without affecting the ability of tar-
13 get countries to obtain controlled items elsewhere.
14 Unilateral controls may therefore permit foreign
15 competitors to serve markets the United States Gov-
16 ernment denies to American firms and workers and
17 impair the reliability of United States suppliers in
18 comparison with their foreign competitors.

19 (10) While the United States may at times have
20 to act unilaterally, we should strive to avoid unilat-
21 eral action if it damages United States commercial
22 interests without effectively promoting our non-
23 proliferation and other national security and foreign
24 policy objectives. At the same time, the need to lead
25 the international community or overriding national

1 security or foreign policy interests may justify uni-
2 lateral controls in specific cases.

3 (11) The multilateral export control system,
4 which helped contain military threats posed by the
5 former Soviet Bloc countries, should be replaced by
6 an effective and efficient multilateral export control
7 program furthering vital interests of the United
8 States in the post-Cold War era.

9 (12) International treaties, such as the Chemi-
10 cal Weapons Convention, and international agree-
11 ments and arrangements intended to control, lessen
12 or eliminate weapons of mass destruction should be
13 fully implemented by, inter alia, imposing restric-
14 tions on imports and exports of designated items, es-
15 tablishing, monitoring and transmitting reports on
16 the production, processing, consumption, export and
17 import of designated items, and complying with ver-
18 ification regimes mandated by such treaties, agree-
19 ments, and arrangements.

20 (13) Restrictions that negatively affect the
21 United States industrial base may ultimately weaken
22 United States military capabilities and lead to de-
23 pendencies on foreign sources for key components.
24 The availability of certain items in the United States

1 and from abroad may affect the welfare of the do-
2 mestic economy.

3 (14) It is important that the administration of
4 export controls imposed for foreign policy purposes
5 give special emphasis to the need to control exports
6 of items and substances hazardous to the public
7 health and the environment which are banned or se-
8 verely restricted for use in the United States, and
9 which, if exported, could affect the international rep-
10 utation of the United States as a responsible trading
11 partner.

12 **SEC. 3. POLICY STATEMENT.**

13 It is the policy of the United States:

14 (1) To minimize uncertainties in export control
15 policy and to encourage trade with all countries with
16 which the United States has diplomatic or trading
17 relations, except those countries with which such
18 trade has been determined by the President to be
19 against the national interest.

20 (2) That the United States should not restrict
21 export trade by its citizens except when necessary
22 for significant national security, non-proliferation,
23 foreign policy, or short supply objectives and such
24 restrictions are administered consistent with basic
25 standards of fairness, and are implemented only

1 after full consideration of the impact on the economy
2 of the United States and only to the extent nec-
3 essary—

4 (A) to stem the proliferation of weapons of
5 mass destruction and the means to deliver them
6 by—

7 (i) leading international efforts to con-
8 trol the proliferation of chemical and bio-
9 logical weapons, nuclear explosive devices,
10 missile delivery systems, and other signifi-
11 cant military capabilities;

12 (ii) controlling involvement and con-
13 tributions by United States persons to for-
14 eign programs intended to design, develop,
15 test, produce, stockpile, or use chemical
16 and biological weapons, nuclear explosive
17 devices, missile delivery systems, and other
18 significant military capabilities and the
19 means to design, develop, test, produce,
20 stockpile, or use them; and

21 (iii) implementing international agree-
22 ments and arrangements that provide for
23 controls on imports and exports of des-
24 ignated items, reports on the production,
25 processing, consumption, exports and im-

1 ports of such items, and compliance with
2 verification programs;

3 (B) to restrict the export of items that
4 would make a significant contribution to the
5 military potential of countries that would prove
6 detrimental to the national security and foreign
7 policy of the United States;

8 (C) to restrict the export of items where
9 necessary to significantly further the foreign
10 policy of the United States or to fulfill its de-
11 clared international commitments; and

12 (D) to restrict the export of items where
13 necessary to protect the domestic economy from
14 the excessive drain of scarce materials or to se-
15 cure the removal by foreign countries of restric-
16 tions on access to supplies where such restric-
17 tions have or may have a serious inflationary
18 impact, have caused or may cause a serious do-
19 mestic shortage, or have been imposed for pur-
20 poses of influencing the foreign policy of the
21 United States.

22 (3) To further increase the reliance of the
23 United States upon multilateral coordination of con-
24 trols through effective control regimes that maintain
25 lists of controlled items that are truly critical to the

1 control objectives, strive to increase membership to
2 include all relevant countries, maintain common cri-
3 teria and procedures for licensing, and harmonize
4 member countries' licensing practices. It is the pol-
5 icy of the United States that multilateral controls
6 are the best means of achieving the objectives of the
7 United States.

8 (4) To encourage all countries that produce
9 items that are controlled by multilateral regimes to
10 adhere to the guidelines and controls of the regimes
11 and to join the regime if they meet the relevant cri-
12 teria for membership.

13 (5) To make every effort to achieve effective
14 multilateral export controls in all cases where the
15 United States imposes export controls.

16 (6) To avoid unilateral export controls and poli-
17 cies except when dictated by overriding national in-
18 terests, to continue to work with other supplier na-
19 tions to make export controls multilateral and to
20 harmonize their implementation, and to avoid unilat-
21 eral action if it damages United States commercial
22 interests without effectively promoting our non-
23 proliferation and other national security and foreign
24 policy objectives. The United States will therefore

1 impose unilateral export controls only when the fol-
2 lowing conditions are met:

3 (A) Diplomatic efforts have failed or clear-
4 ly would be unsuccessful in establishing a multi-
5 lateral regime.

6 (B) The national security, nonproliferation,
7 or foreign policy objectives expected to be
8 achieved by the unilateral control justify any
9 expected loss of sales, jobs, and reliability on
10 the part of United States exporters.

11 (7) To eliminate unilateral dual-use export con-
12 trols and policies unless their continuation in force
13 is essential to United States national security, non-
14 proliferation, or foreign policy interests.

15 (8) To eliminate unnecessary and ineffective ex-
16 port controls.

17 (9) To make all licensing decisions in a timely
18 manner so undue delays in the licensing process will
19 not cause a United States firm to lose an export
20 sale.

21 (10) To ensure that control lists are periodically
22 updated to reflect the changing proliferation threat,
23 advances in technology, and a realistic appraisal of
24 what is beyond the reach of effective control.

1 (11) To maintain a presumption of approval of
2 applications for authority to export dual-use goods
3 to civil end uses and end users under this Act, ab-
4 sent sound reasons for denial based on national se-
5 curity, nonproliferation and foreign policy grounds,
6 based upon the commitment of the United States to
7 an open international trading system and the need
8 to ensure American competitiveness.

9 (12) To use export controls to encourage other
10 countries to take immediate steps to prevent the use
11 of their territories or resources to aid, encourage or
12 give sanctuary to those persons directing, supporting
13 or participating in acts of international terrorism.
14 To achieve this objective, the President shall make
15 reasonable and prompt efforts to secure the removal
16 or reduction of such assistance to international ter-
17 rorists through international cooperation and agree-
18 ment before imposing export controls.

19 (13) To sustain vigorous scientific enterprise.
20 To do so involves sustaining the ability of scientists
21 and other scholars freely to communicate research
22 findings, in accordance with the applicable provisions
23 of law, by means of publication, teaching, con-
24 ferences, and other forms of scholarly exchange.

1 (14)(A) To oppose restrictive trade practices or
2 boycotts fostered or imposed by foreign countries
3 against other countries friendly to the United States
4 or against any United States person; and

5 (B) To encourage and, in specified cases, re-
6 quire United States persons engaged in the export of
7 commodities, software, technology and other infor-
8 mation to refuse to take actions, including furnish-
9 ing information or entering into or implementing
10 agreements, which have the effect of furthering or
11 supporting the restrictive trade practices or boycotts
12 fostered or imposed by any foreign country against
13 a country friendly to the United States or against
14 any United States person.

15 (15) To ensure that United States economic in-
16 terests play a key role in decisions on export controls
17 and to take immediate action to increase the rigor
18 of economic analysis and data available in the deci-
19 sionmaking process.

20 (16) To streamline export licensing functions
21 and thereby better serve the exporting public by re-
22 ducing and eliminating overlapping, conflicting, and
23 inconsistent regulatory burdens; and further, to cre-
24 ate a more efficient, responsive, transparent, and ef-
25 fective export control process.

1 (17) To cooperate with other countries with
2 which the United States has defense treaty commit-
3 ments or common strategic objectives in restricting
4 the export of goods and technology which would
5 make a significant contribution to the military po-
6 tential of any country or combination of countries
7 which would prove detrimental to the national secu-
8 rity of the United States and of those countries with
9 which the United States has defense treaty commit-
10 ments or common strategic objectives, and to en-
11 courage other friendly countries to cooperate in re-
12 stricting the sale of goods and technology that can
13 harm our mutual security.

14 (18) To promote the national security of the
15 United States which requires that the Nation's econ-
16 omy shall flourish, its geographic integrity is main-
17 tained, its political and foreign policy views are re-
18 spected, the freedom and well-being of its citizens
19 are assured, and that American values are pre-
20 served. The United States as a world power must
21 protect its national security against direct and indi-
22 rect threats through the promotion of nonprolifera-
23 tion policies in all areas of the world.

24 (19) To implement export controls and diplo-
25 matic activity needed to sustain multilateral and bi-

1 lateral activities and thereby complement and rein-
2 force each other.

3 (20) To enhance the national security and non-
4 proliferation interests of the United States. To this
5 end and consistent with the other policies of this sec-
6 tion and the criteria of section 5(b) of this Act, the
7 United States will use multilateral and unilateral
8 controls when necessary to ensure that access to
9 weapons of mass destruction, missile delivery sys-
10 tems, and other significant military capabilities is re-
11 stricted. While the multilateral nonproliferation re-
12 gimes will be the primary instruments through which
13 the United States will pursue its nonproliferation
14 goals, it will also engage in bilateral agreements and,
15 when consistent with the policies of this section and
16 the criteria of section 5(b), take unilateral action.

17 (21) To defer and punish acts of international
18 terrorism and to encourage other countries to take
19 immediate steps to do so, or to terminate their sup-
20 port for, encouragement of, or use of their territories
21 to aid or give sanctuary to, persons and groups in-
22 volved in international terrorism. To this end and
23 consistent with the policies of this section and the
24 criteria of section 5(b) of this Act, the United States
25 should distance itself from countries that have vio-

1 lated international norms of behavior by repeatedly
2 supporting acts of international terrorism by re-
3 stricting exports to those countries. The United
4 States may establish such controls on exports as
5 may be appropriate to induce such countries to
6 change their unacceptable policies.

7 (22) To promote international peace, stability,
8 and respect of fundamental human rights. The
9 United States may establish controls on exports to
10 countries that threaten regional stability, abuse of
11 fundamental rights of their citizens, or to promote
12 other important foreign policy objectives of the
13 United States consistent with the policies of this sec-
14 tion and the criteria of section 5(b) of this Act.

15 (23) In developing changes to multilateral con-
16 trol lists, to seek to focus controls on only that set
17 of items that, if taken together and if denied to tar-
18 get countries, would carry out the policy of the
19 United States to deny such countries the ability to
20 design, develop, test, produce, stockpile, or use rel-
21 evant conventional military capability, weapons of
22 mass destruction, their delivery systems, or other ca-
23 pabilities the denial of which are the goals of United
24 States export control policy.

1 **SEC. 4. GENERAL PROVISIONS.**

2 (a) TYPES OF LICENSES.—The Secretary may re-
3 quire any type of validated or general license under such
4 terms and conditions as may be imposed by the Secretary
5 for the effective and efficient implementation of this Act.

6 (b) CONTROL LIST.—In accordance with the proce-
7 dures specified in sections 5 and 11 of this Act, the Sec-
8 retary shall establish and maintain a list (hereinafter in
9 this Act referred to as the “Commerce Control List” or
10 “Control List”) stating license requirements for exports
11 of items under this Act.

12 (c) MILITARILY CRITICAL TECHNOLOGIES LIST.—
13 The Secretary of Defense shall bear primary responsibility
14 for establishing and maintaining the Militarily Critical
15 Technologies List (hereinafter in the Act referred to as
16 the “MCTL”) identifying equipment and technologies crit-
17 ical to the design, development, test, production, stock-
18 piling, or use of weapons of mass destruction and other
19 significant military capabilities, including nuclear, biologi-
20 cal and chemical weapons, and manned and unmanned ve-
21 hicles capable of delivering such weapons.

22 (d) RIGHT OF EXPORT.—No authority or permission
23 to export may be required under this Act, or under regula-
24 tions issued under this Act, except to carry out the policies
25 set forth in section 3 of this Act.

1 (e) DELEGATION OF AUTHORITY.—The President
2 may delegate the power, authority, and discretion con-
3 ferred upon him by this Act to such departments, agen-
4 cies, or officials of the Government as he may consider
5 appropriate, except that no authority under this Act may
6 be delegated to, or exercised by, any official of any depart-
7 ment or agency the head of which is not appointed by the
8 President, by and with the advice and consent of the
9 Senate.

10 (f) NOTIFICATION OF THE PUBLIC; CONSULTATION
11 WITH BUSINESS.—The Secretary shall keep the public
12 fully apprised of changes in export control policy and pro-
13 cedures instituted in conformity with this Act with a view
14 to encouraging trade. The Secretary shall meet regularly
15 with representatives of a broad spectrum of enterprises,
16 labor organizations, and citizens interested in or affected
17 by export controls, in order to obtain their views on United
18 States export control policy and the foreign availability of
19 items subject to controls.

20 (g) TECHNICAL ADVISORY COMMITTEES.—

21 (1) Upon his or her own initiative or upon writ-
22 ten request by representatives of a substantial seg-
23 ment of any industry which produces any items sub-
24 ject to export controls under this Act or being con-
25 sidered for such controls, the Secretary shall appoint

1 technical advisory committees. Such technical advisory
2 committees shall advise the United States on all
3 aspects of controls imposed or proposed under this
4 Act. Each such committee shall consist of representatives
5 of United States industry and Government,
6 including the Department of Commerce and such
7 other departments and agencies as appropriate.
8 The Secretary shall permit the widest possible participation
9 by the business community on the technical
10 advisory committees.

11 (2) Technical advisory committees established
12 under paragraph (1) shall advise and assist the Secretary
13 and any other department, agency, or official
14 of the Government of the United States to which the
15 President delegates authority under this Act, on actions
16 designed to carry out the policies of this Act.
17 Such committees, where they have expertise in such
18 matters, shall be consulted on questions involving
19 (A) technical matters, (B) worldwide availability and
20 actual utilization of production technology, (C) licensing
21 procedures which affect the level of export
22 controls applicable to any items, (D) revisions of the
23 Control List (as provided in subsection (b), including
24 proposed revisions of multilateral controls in which
25 the United States participates), (E) the issuance of

1 regulations, (F) the impact and interpretation of ex-
2 isting regulations, (G) processes and procedures for
3 review of licenses and policy, and (H) any other
4 questions relating to actions designed to carry out
5 this Act. Nothing in this subsection shall prevent the
6 United States Government from consulting, at any
7 time, with any person representing industry or the
8 general public, regardless of whether such person is
9 a member of a technical advisory committee. Mem-
10 bers of the public shall be given a reasonable oppor-
11 tunity, pursuant to regulations prescribed by the
12 Secretary, to present evidence to such committees.

13 (3) Upon request of any member of any such
14 committee, the Secretary may, if the Secretary de-
15 termines it appropriate, reimburse such member for
16 travel, subsistence, and other necessary expenses in-
17 curred by such member in connection with the duties
18 of such member.

19 (4) Each such committee shall elect a chair-
20 man, and shall meet at least every 3 months at the
21 call of the chairman, unless the chairman deter-
22 mines, in consultation with the other members of the
23 committee, that such a meeting is not necessary to
24 achieve the purposes of this subsection. Each such
25 committee shall be terminated after a period of 2

1 years, unless extended by the Secretary for addi-
2 tional periods of 2 years. The Secretary shall consult
3 each such committee on such termination or exten-
4 sion of that committee.

5 (5) To facilitate the work of the technical advi-
6 sory committees, the Secretary, in conjunction with
7 other departments and agencies participating in the
8 administration of this Act, shall disclose to each
9 such committee adequate information, consistent
10 with national security, pertaining to the reasons for
11 the export controls which are in effect or con-
12 templated for the items or policies for which that
13 committee furnishes advice. Information provided by
14 the technical advisory committees shall not be sub-
15 ject to disclosure under section 552 of title 5, United
16 States Code, and such information shall not be pub-
17 lished or disclosed unless the Secretary determines
18 that the withholding thereof is contrary to the na-
19 tional interest.

20 (h) FEES.—No fee may be charged in connection
21 with the submission or processing of an export license
22 application.

23 **SEC. 5. NONPROLIFERATION, NATIONAL SECURITY, AND**
24 **FOREIGN POLICY CONTROL AUTHORITIES.**

25 (a) AUTHORITY.—

1 (1) In order to carry out the policies enumer-
2 ated in section 3 of this Act, the President may, in
3 accordance with the provisions of this section and
4 section 15(e), prohibit or curtail the export of any
5 item subject to the jurisdiction of the United States
6 or exported by any person subject to the jurisdiction
7 of the United States. The President may regulate
8 domestic and foreign conduct, consistent with the
9 policies of this Act. Such authority shall include, but
10 not be limited to, the authority to prohibit activity
11 such as financing, contracting, servicing or employ-
12 ment, to deny access to items in the United States
13 and abroad, to conduct audits of records and inspec-
14 tions of facilities, to compel reports, and to imple-
15 ment international commitments of the United
16 States with respect to the control of exports.

17 (2) Except as otherwise specified in this Act,
18 the authority contained in this Act shall be exercised
19 by the Secretary, in consultation with appropriate
20 departments and agencies.

21 (3) As directed by the President, annual policy
22 guidance shall be issued to provide detailed imple-
23 menting guidance to licensing officials in all appro-
24 priate departments and agencies.

1 (4) To develop the annual policy guidance, ex-
2 port controls and other regulations to implement
3 policies contained in section 3 shall be reviewed an-
4 nually. This annual policy review shall include an
5 evaluation of benefits and costs, including economic
6 impact, of export controls. The review should in-
7 clude—

8 (A) an assessment by the Secretary of
9 Commerce at least 30 days in advance of deter-
10 minations to extend controls describing the eco-
11 nomic consequences of the controls during the
12 preceding 12 months, including estimates of
13 any lost United States exports and jobs;

14 (B) an assessment by the Secretary of
15 State at least 30 days in advance of determina-
16 tions to extend controls describing the objec-
17 tives of the controls and the extent to which the
18 controls have attained those objectives over the
19 preceding 12 months;

20 (C) an assessment by the Secretary of De-
21 fense at least 30 days in advance of determina-
22 tions to extend controls describing the impact
23 export controls have had in the preceding 12
24 months on the national security of the United
25 States;

1 (D) solicitation of public comments for
2 submission of such comments at least 60 days
3 in advance of determinations to extend controls;
4 and

5 (E) a systematic review by the Secretary of
6 the above in consultation with appropriate de-
7 partments and agencies.

8 (5) Based upon the review required by para-
9 graph (4) above, the Secretary, in consultation with
10 appropriate departments and agencies, shall deter-
11 mine at least annually whether the national interest
12 requires that he or she terminate unilateral controls
13 and regulations or maintain them for an additional
14 12 months. Unilateral controls imposed under
15 (b)(1)(B) of this section shall expire by operation of
16 law after one year from the most recent imposition
17 or renewal of such controls unless extended by the
18 Secretary based upon his or her findings consistent
19 with the criteria and other requirements of this Act.
20 Such findings shall be provided to the Congress pur-
21 suant to subsection (e)(2) of this section.

22 (b) CRITERIA.—

23 (1) Controls may be imposed, expanded or ex-
24 tended under this section only if the President deter-
25 mines that—

1 (A) the control is essential to advancing
2 the nonproliferation, national security, or for-
3 eign policies of the United States provided in
4 section 3 above; and like-minded states have
5 agreed with the United States on the utility of
6 such controls in obtaining a shared objective
7 and procedures for implementing that objective;
8 or

9 (B) the control is essential to advancing
10 the nonproliferation, national security, or for-
11 eign policies of the United States provided in
12 section 3 above; and the objective of the control
13 is in the overall national interest of the United
14 States and cannot be attained by means other
15 than the control.

16 (2) The President should make the determina-
17 tion described in subparagraph (1)(B) above for the
18 purpose of imposing or expanding a unilateral con-
19 trol, only if—

20 (A) such controls are likely to make sub-
21 stantial progress toward achieving the intended
22 purpose of—

23 (i) changing, modifying or constrain-
24 ing the undesirable conduct or policies of
25 the target country or countries;

1 (ii) denying access by the target coun-
2 try to controlled items for all sources;

3 (iii) establishing multilateral coopera-
4 tion to deny the target country access to
5 controlled items from all sources; or

6 (iv) denying exports or assistance that
7 significantly and directly contribute to the
8 proliferation of weapons of mass destruc-
9 tion, terrorism, human rights abuses, or
10 regional instability;

11 (B) the proposed controls are compatible
12 with the foreign policy objectives of the United
13 States and with overall United States policy to-
14 ward the target country;

15 (C) the reaction of other countries to the
16 imposition or expansion of such export controls
17 by the United States is not likely to render the
18 controls ineffective in achieving the intended
19 purpose or to be counter-productive to United
20 States policy interests;

21 (D) the effect of the proposed controls on
22 the export performance of the United States,
23 the competitive position of the United States as
24 a supplier of items, or on the economic well-
25 being of individual United States companies

1 and their employees and communities does not
2 exceed the benefit to the United States foreign
3 policy, nonproliferation, or national security in-
4 terests; and

5 (E) the United States has the ability to en-
6 force the proposed controls effectively.

7 (3) The President should make the determina-
8 tion described in subparagraph (1)(B) above for the
9 purpose of extending a control, only if—

10 (A) such controls are likely to continue to
11 make substantial progress toward achieving the
12 intended purpose of—

13 (i) changing, modifying or constrain-
14 ing the undesirable conduct or policies of
15 the target country or countries;

16 (ii) denying access by the target coun-
17 try to controlled items from all sources;

18 (iii) establishing multilateral coopera-
19 tion to deny the target country access to
20 controlled items from all sources; or

21 (iv) denying exports or assistance that
22 significantly and directly contribute to the
23 proliferation of weapons of mass destruc-
24 tion, terrorism, human rights abuses, or
25 regional instability;

1 (B) the impact of the controls has been
2 compatible with the foreign policy objectives of
3 the United States and with overall United
4 States policy toward the target country;

5 (C) the reaction of other countries to the
6 imposition or expansion of such export controls
7 by the United States has not rendered the con-
8 trols ineffective in achieving the intended pur-
9 pose and have not been counter-productive to
10 United States policy interests;

11 (D) the effect of the proposed controls on
12 the export performance of the United States,
13 the competitive position of the United States as
14 a supplier of items, and the economic well-being
15 of individual United States companies and their
16 employees and communities has not exceeded
17 the benefit to the United States foreign policy,
18 nonproliferation, or national security interests;
19 and

20 (E) the United States has enforced the
21 controls effectively.

22 (c) CONSULTATION WITH INDUSTRY.—The Sec-
23 retary, in every possible instance, shall consult with and
24 seek advice from affected United States public, industries,
25 and technical advisory committees and seek public com-

1 ment before the imposition, expansion, or extensions of
2 any export control under this section. Such consultation
3 shall include advice on the criteria set forth in subsection
4 (b) and such other matters as the Secretary considers ap-
5 propriate.

6 (d) CONSULTATION WITH OTHER COUNTRIES.—
7 When imposing, expanding, or extending export controls
8 under this section, the Secretary of State shall, in con-
9 sultation with appropriate departments and agencies and
10 at the earliest appropriate opportunity, consult with the
11 countries with which the United States maintains export
12 controls cooperatively and with such other countries as ap-
13 propriate to advise them of the reasons for the action and
14 to urge them to adopt similar controls.

15 (e) CONSULTATIONS WITH THE CONGRESS.—

16 (1) The Secretary, in consultation with appro-
17 priate departments and agencies, shall keep the Con-
18 gress fully apprised of changes in export control pol-
19 icy and procedures pursuant to this Act. The Sec-
20 retary or his designates, in consultation with rep-
21 resentatives of other appropriate departments and
22 agencies, shall consult with the Committee on For-
23 eign Affairs of the House of Representatives and the
24 Committee on Banking, Housing, and Urban Affairs
25 of the Senate on changes in export control policy,

1 procedures, and other developments related to this
2 Act.

3 (2) The Secretary may not impose, expand, or
4 extend unilateral export controls under this section
5 until the Secretary has submitted to the Congress a
6 report—

7 (A) specifying the purpose of the controls;

8 (B) specifying the determinations of the
9 Secretary described in subsection (b), the bases
10 for such determinations (or considerations), and
11 any possible adverse foreign policy consequences
12 of the controls;

13 (C) describing the nature, the subjects,
14 and the results of, or the plans for, the con-
15 sultation with industry and the interested pub-
16 lic pursuant to subsection (c) and with other
17 countries pursuant to subsection (d);

18 (D) specifying the nature and results of
19 any alternative means attempted to achieve the
20 objective of the control, or the reasons for im-
21 posing, expanding, or extending the controls
22 without attempting any such alternative means;
23 and

24 (E) describing the availability from other
25 countries of items comparable to the items sub-

1 ject to the proposed export controls, and de-
2 scribing the nature and results of the efforts
3 made to secure the cooperation of foreign gov-
4 ernments in controlling the foreign availability
5 of such comparable goods or technology.

6 Such report shall also indicate how such controls will
7 further significantly the policies of the United States
8 as set forth in section 3 or will further its declared
9 international obligations.

10 (3) To the extent necessary to further the effec-
11 tiveness of the export controls, portions of a report
12 required by paragraph (2) may be submitted to the
13 Congress on a classified basis, and shall be subject
14 to the provisions of section 11(c) of this Act. Each
15 such report shall, at the same time it is submitted
16 to the Congress, also be submitted to the General
17 Accounting Office for the purpose of assessing the
18 report's full compliance with the intent of this sub-
19 section.

20 (f) MULTILATERAL CONTROL REGIMES.—

21 (1) POLICY.—In order to carry out the policies
22 of section 3 and the criteria of section 5(b), the Sec-
23 retary of State, in consultation with appropriate de-
24 partments and agencies, should seek multilateral ar-
25 rangements that are intended to secure effective

1 achievement of these policies and criteria and in so
2 doing also establish fairer and more predictable com-
3 petitive opportunities for United States exporters.

4 (2) STANDARDS FOR NATIONAL SYSTEMS.—In
5 the establishment and maintenance of multilateral
6 regimes, the Secretary of State, in consultation with
7 appropriate departments and agencies, shall take
8 steps to attain the cooperation of members in the ef-
9 fective implementation of export control systems.
10 Such systems should contain the following elements:

11 (A) National laws providing sufficient en-
12 forcement authorities, civil and criminal pen-
13 alties, and statutes of limitations sufficient to
14 deter potential violations and punish violators.

15 (B) A program to evaluate export license
16 applications that includes sufficient technical
17 expertise to assess the licensing status of ex-
18 ports and ensure the reliability of end users.

19 (C) An enforcement mechanism that pro-
20 vides authority for trained enforcement officers
21 to investigate and prevent illegal exports.

22 (D) A system of export control documenta-
23 tion to verify the movement of items.

1 (E) Procedures for the coordination and
2 exchange of information concerning licensing,
3 end users, and enforcement.

4 (F) Adequate national resources devoted to
5 subparagraphs (A) through (E) of this sub-
6 section.

7 (3) STANDARDS FOR MULTILATERAL RE-
8 GIMES.—In the establishment and maintenance of
9 multilateral regimes, the Secretary of State, in con-
10 sultation with appropriate departments and agen-
11 cies, shall seek, consistent with the policies of section
12 3 and the criteria of section 5(b), the following fea-
13 tures for the multilateral control regimes in which
14 the United States participates:

15 (A) FULL MEMBERSHIP.—Achieve mem-
16 bership of all supplier countries whose policies
17 and activities are consistent with the objectives
18 and membership criteria of the multilateral ar-
19 rangement.

20 (B) EFFECTIVE ENFORCEMENT AND COM-
21 PLIANCE.—Promote enforcement and compli-
22 ance with the rules and guidelines of the mem-
23 bers of the regime through maintenance of an
24 effective control list.

1 (C) PUBLIC UNDERSTANDING.—Enhance
2 public understanding of each regime’s purpose
3 and procedures.

4 (D) EFFECTIVE IMPLEMENTATION PROCE-
5 DURES.—Achieve procedures for effective imple-
6 mentation of the regime rules and guidelines
7 through uniform and consistent interpretations
8 of export controls agreed to by the governments
9 participating in the regime.

10 (E) ENHANCED COOPERATION AMONG RE-
11 GIME MEMBERS.—Reach agreement to enhance
12 cooperation among members of the regime in
13 obtaining the agreement of governments outside
14 the regime to restrict the export of items con-
15 trolled by the regime, to establish an ongoing
16 mechanism in the regime to coordinate planning
17 and implementation of export control measures
18 related to such agreements, and to remove
19 items from the list if the control of such items
20 no longer serves the objectives of the members
21 of the regime.

22 (F) PERIODIC HIGH-LEVEL MEETINGS.—
23 Conduct periodic meetings of high-level rep-
24 resentatives of participating governments for
25 the purpose of coordinating export control poli-

1 cies and issuing policy guidance to the regime
2 members.

3 (G) COMMON LIST OF CONTROLLED
4 ITEMS.—Reach agreement on a common list of
5 items controlled by the regime.

6 (4) INCENTIVES FOR PARTNERSHIP.—Consist-
7 ent with the policies of this Act and consistent with
8 the objectives, rules and guidelines of the individual
9 regime—

10 (A) the Secretary, in consultation with ap-
11 propriate departments and agencies, may pro-
12 vide for exports free of validated license require-
13 ments to and among members of a multilateral
14 regime for items subject to controls under such
15 a multilateral regime; and

16 (B) the Secretary, in consultation with ap-
17 propriate departments and agencies, may adjust
18 licensing policies for access to items controlled
19 pursuant to this Act depending on a country or
20 other entity's degree of adherence to the export
21 control policies of section 5.

22 (g) PUBLICATION OF ELEMENTS OF MULTILATERAL
23 CONTROL REGIMES.—Consistent with arrangements in
24 multilateral regimes, the United States shall publish the
25 following information:

1 (1) Purpose(s) of the control regime.

2 (2) Member countries.

3 (3) Licensing policy.

4 (4) Items subject to controls together with all
5 public notes, understandings, and other aspects of
6 such agreement and all changes thereto.

7 (5) Target countries or regions (if any), target
8 end uses, and target end users (including projects of
9 concern).

10 (6) Rules of interpretation.

11 (7) Major policy actions.

12 (8) The rules and procedures of the regime for
13 establishing and modifying the above elements of the
14 regime and for reviewing export license applications
15 as provided for by the regime.

16 Subject to commitments required by multilateral regimes,
17 within 6 months after the date of the enactment of this
18 Act or thereafter within 2 months of joining or organizing
19 a new multilateral regime, the Secretary, in consultation
20 with appropriate departments and agencies, shall publish
21 the above information. In addition, the Secretary shall
22 publish changes in the above information within 2 months
23 of adoption of such changes by a regime.

24 (h) SEEKING MULTILATERAL SUPPORT FOR UNILAT-
25 ERAL CONTROLS.—For all unilateral controls, the Sec-

1 retary of State, in consultation with appropriate depart-
2 ments and agencies, shall have a continuing duty to seek
3 support for such controls by other countries and by effec-
4 tive multilateral control regimes.

5 (i) REGULATION INDICATING NATURE OF UNILAT-
6 ERAL CONTROLS.—Regardless of the reason for control,
7 all unilateral controls shall be indicated as such by regula-
8 tion.

9 (j) IMPLEMENTATION.—

10 (1) NONPROLIFERATION.—

11 (A) COUNTRIES PARTICIPATING IN CER-
12 TAIN AGREEMENTS.—The Secretary of State, in
13 consultation with appropriate departments and
14 agencies, shall be responsible for conducting ne-
15 gotiations with those countries participating in
16 the groups known as the Coordinating Commit-
17 tee, the Missile Technology Control Regime
18 (“MTCR”), the Australia Group, the Nuclear
19 Suppliers’ Group, and other regimes that may
20 be established, regarding their cooperation in
21 restricting the export of items in order to carry
22 out the policies set forth in section 3.

23 Such negotiations shall cover, among other issues,
24 which items should be subject to multilaterally
25 agreed export restrictions, and the implementation

1 of the restrictions consistent with the principles in
2 this Act.

3 (B) OTHER COUNTRIES.—The Secretary of
4 State, in consultation with appropriate depart-
5 ments and agencies, shall be responsible for
6 conducting negotiations with countries and
7 groups of countries not referred to in subpara-
8 graph (A) regarding their cooperation in re-
9 stricting the export of items consistent with
10 purposes set forth in this Act.

11 (2) MISSILE TECHNOLOGY.—The Secretary,
12 consistent with section 3, section 5(b), section 5(f),
13 and in consultation with appropriate departments
14 and agencies—

15 (A) shall, consistent with section 11(e), es-
16 tablish and maintain, as part of the Control
17 List, dual-use items on the MTCR Annex;

18 (B) may include, as part of the Control
19 List, items that would provide a material con-
20 tribution to the design, development, test, pro-
21 duction, stockpiling, or use of missile delivery
22 systems, which items are not included in the
23 MTCR Annex but which the United States pro-
24 poses to the other MTCR adherents for inclu-
25 sion in the MTCR Annex; and

1 (C) shall require an individual validated li-
2 cense, consistent with MTCR arrangements,
3 for—

4 (i) any export of items on the list re-
5 ferred to under paragraph (2) to any coun-
6 try, except as provided for in subsection
7 (f)(4) of this section; and

8 (ii) any export of items that the ex-
9 porter knows is destined for a project or
10 facility for the design, development, or
11 manufacture of a missile in a country that
12 is not an MTCR adherent.

13 (3) CHEMICAL AND BIOLOGICAL WEAPONS.—

14 The Secretary, consistent with section 3, section
15 5(b), section 5(f), and in consultation with appro-
16 priate departments and agencies—

17 (A) shall, consistent with section 11(e), es-
18 tablish and maintain, as part of the Control
19 List, dual-use items listed by the Australia
20 Group or by the Chemical Weapons Convention;

21 (B) may include, as part of the Control
22 List, items that would provide a material con-
23 tribution to the design, development, test, pro-
24 duction, stockpiling, or use of chemical or bio-
25 logical weapons, which items are not listed by

1 the Australia Group but which the United
2 States proposes to the other Australia Group
3 adherents for inclusion in its list of controlled
4 items; and

5 (C) shall require an individual validated li-
6 cense, consistent with the arrangements in the
7 Australia Group and the Chemical Weapons
8 Convention, for—

9 (i) any export of items on the list re-
10 ferred to under paragraph (3) to any coun-
11 try, except as provided for in subsection
12 (f)(4) of this section; and

13 (ii) any export of items that the ex-
14 porter knows is destined for a project or
15 facility for the design, development, or
16 manufacture of a chemical or biological
17 weapon.

18 (4) INTERNATIONAL TERRORISM.—

19 (A) A validated license shall be required
20 for the export of items to a country if the Sec-
21 retary of State has made the following deter-
22 minations:

23 (i) The government of such country
24 has repeatedly provided support for acts of
25 international terrorism.

1 (ii) The export of such items could
2 make a significant contribution to the mili-
3 tary potential of such country, including its
4 military logistics capability, or could en-
5 hance the ability of such country to sup-
6 port acts of international terrorism.

7 (B) The Secretary and the Secretary of
8 State shall notify the Committee on Foreign Af-
9 fairs of the House of Representatives and the
10 Committee on Banking, Housing, and Urban
11 Affairs and the Committee on Foreign Rela-
12 tions of the Senate at least 30 days before issu-
13 ing any validated license required by paragraph
14 (A).

15 (C) Each determination of the Secretary of
16 State under paragraph (A)(i), including each
17 determination in effect on the date of the enact-
18 ment of the Antiterrorism and Arms Export
19 Amendments Act of 1989 (December 12,
20 1989), shall be published in the Federal Reg-
21 ister.

22 (D) A determination made by the Sec-
23 retary of State under paragraph (A)(i) may not
24 be rescinded unless the President submits to
25 the Speaker of the House of Representatives

1 and the chairman of the Committee on Bank-
2 ing, Housing, and Urban Affairs and the chair-
3 man of the Committee on Foreign Relations of
4 the Senate—

5 (i) before the proposed rescission
6 would take effect, a report certifying
7 that—

8 (I) there has been a fundamental
9 change in the leadership and policies
10 of the government of the country con-
11 cerned;

12 (II) that government is not sup-
13 porting acts of international terror-
14 ism; and

15 (III) that government has pro-
16 vided assurances that it will not sup-
17 port acts of international terrorism in
18 the future; or

19 (ii) at least 45 days before the pro-
20 posed rescission would take effect, a report
21 justifying the rescission and certifying
22 that—

23 (I) the government concerned has
24 not provided any support for inter-

1 national terrorism during the preced-
2 ing 6-month period; and

3 (II) the government concerned
4 has provided assurances that it will
5 not support acts of international ter-
6 rorism in the future.

7 (5) HUMAN RIGHTS AND CRIME CONTROL.—

8 (A) Crime control and detection instru-
9 ments and equipment shall be approved for ex-
10 port by the Secretary only pursuant to a vali-
11 dated export license. Notwithstanding any other
12 provision of the Act—

13 (i) any determination of the Secretary
14 of what items shall be included on the Con-
15 trol List established pursuant to section
16 11(e) as a result of the export restriction
17 imposed under this subsection shall be
18 made with the concurrence of the Sec-
19 retary of State; and

20 (ii) any determination of the Sec-
21 retary to approve or deny an export license
22 application to export crime control and de-
23 tection instruments or equipment shall be
24 made with the concurrence of the Sec-
25 retary of State, except that, if the Sec-

1 retary does not agree with the Secretary of
2 State with respect to any determination
3 under subparagraph (i) or (ii), the matter
4 shall be referred to the President for reso-
5 lution.

6 (B) The provisions of this subsection shall
7 not apply to exports to Canada, countries which
8 are members of the European Union, Norway,
9 Iceland, Japan, Australia, or New Zealand, or
10 to such countries as the President shall des-
11 ignate consistent with the purposes of this sub-
12 section and section 502B of the Foreign Assist-
13 ance Act of 1961 (22 U.S.C. 2304).

14 (k) UNFAIR IMPACT ON UNITED STATES EX-
15 PORTER.—

16 (1) POLICY.—It is the policy of the United
17 States that no United States exporter should be
18 placed at a competitive disadvantage vis-a-vis its
19 commercial competitors because of export control
20 policies or practices unless relief from such controls
21 would create a significant risk to the foreign policy,
22 nonproliferation, or national security interests of the
23 United States.

24 (2) RELIEF FROM EXPORT CONTROLS.—A per-
25 son may petition the Secretary for relief from cur-

1 rent export control requirements on any one or more
2 of the following grounds and the Secretary may con-
3 duct evaluations for relief on his or her own initia-
4 tive based upon any one or more of the following
5 grounds:

6 (A) FOREIGN AVAILABILITY.—The con-
7 trolled item is available in fact in sufficient
8 quantity and comparable quality to the pro-
9 posed countries of export or end users from
10 sources outside the United States so that the
11 requirement for a validated license is or would
12 be ineffective in achieving the purpose of the
13 control.

14 (B) INEFFECTIVE CONTROLS.—The con-
15 trolled items are so widely available in the
16 United States that the Government cannot en-
17 force the controls effectively, unless the Sec-
18 retary has reliable evidence that the controls
19 have been effective in denying such target des-
20 tination access to the controlled items originat-
21 ing in the United States.

22 (C) COMPETITIVE DISADVANTAGE.—

23 (i) Differences between the export
24 control policies or procedures of the United
25 States and that of governments of foreign

1 suppliers effectively has placed or will place
2 the United States exporter at a near-term
3 commercial disadvantage vis-a-vis its com-
4 petitors abroad.

5 (ii) Changes to the domestic control
6 lists of the United States and foreign gov-
7 ernments result in similar items being con-
8 trolled differently thus resulting in a com-
9 petitive disadvantage.

10 (3) PROVISIONS FOR RELIEF.—Consistent with
11 multilateral arrangements, the Secretary, in con-
12 sultation with appropriate departments and agen-
13 cies, shall make determinations of facts under para-
14 graph (2) and, subject to paragraph 4, provide the
15 following relief to firms that meet the criteria in
16 paragraph (2):

17 (A) Change the control status of all or
18 some of the items in question so as to eliminate
19 any significant competitive disadvantage.

20 (B) Selectively approve the sale of con-
21 trolled goods so as to eliminate any significant
22 competitive disadvantage.

23 (C) Seek multilateral support to eliminate
24 the source of foreign availability or to enhance
25 a control to make it effective. If this relief is

1 chosen and if such efforts fail to achieve multi-
2 lateral support to eliminate the source of for-
3 eign availability or to make the control effec-
4 tive, then not later than 330 days from the date
5 of the Secretary's initiation of an assessment,
6 the Secretary shall provide other relief pursuant
7 to (A) or (B) above or conclude pursuant to
8 paragraph (4) that the granting of such relief
9 would create a significant risk to United States
10 nonproliferation, foreign policy or national secu-
11 rity interests: *Provided, however,* If the Sec-
12 retary of State, in consultation with appropriate
13 departments and agencies, finds that substan-
14 tial progress is being made to achieve multilat-
15 eral support to eliminate the source of foreign
16 availability or to make the control effective,
17 then the Secretary shall provide other relief
18 pursuant to (A) or (B) above or conclude pur-
19 suant to paragraph (4) that the granting of
20 such relief would create a significant risk to
21 United States nonproliferation, foreign policy or
22 national security interests, and shall do so with-
23 in an additional 180 days.

24 Except as provided in paragraph (5), a determina-
25 tion that a petitioner qualifies for relief under para-

1 graph (2) above shall not compel the United States
2 to decontrol an item that remains subject to control
3 by a multilateral regime in which the United States
4 is a member or adherent.

5 (4) EXCEPTIONS FROM RELIEF.—The Secretary
6 shall provide relief to a petitioner who qualifies for
7 relief under paragraph (2) unless the Secretary con-
8 cludes that the granting of such relief would create
9 a significant risk to United States nonproliferation,
10 foreign policy, or national security interests. In the
11 event the Secretary determines to grant such relief,
12 he or she may do so unless the President determines
13 that such relief would create a significant risk to the
14 foreign policy, nonproliferation, or national security
15 interests of the United States.

16 (5) RELIEF FROM TRADITIONAL EAST-WEST
17 COCOM CONTROLS.—Relief under paragraph (2)
18 shall compel either the elimination of the foreign
19 availability or decontrol as provided in this para-
20 graph for an item controlled by the United States
21 based solely on its undertakings in the Coordinating
22 Committee prior to October of 1993 so long as the
23 Coordinating Committee shall continue in existence.
24 For such an item, the Secretary may not, after the
25 determination is made under paragraph (2), require

1 a validated license for the export of such items dur-
2 ing the period that such determination remains in
3 effect, unless the President determines that the ab-
4 sence of export controls under this section on the
5 items would prove detrimental to the national secu-
6 rity of the United States.

7 (6) PROCEDURES.—In any case in which the
8 President or the Secretary determines that export
9 controls under this section must be maintained not-
10 withstanding the existence of facts that constitute a
11 basis for granting relief, the Secretary shall publish
12 that determination, together with a concise state-
13 ment of its basis and the estimated economic impact
14 of the decision.

15 (A) NOTICE OF ASSESSMENTS.—Whenever
16 the Secretary undertakes an assessment under
17 paragraph (2), the Secretary shall publish no-
18 tice of initiation of such assessment in the Fed-
19 eral Register.

20 (B) PROCEDURES FOR MAKING DETER-
21 MINATIONS.—During the conduct of an assess-
22 ment under this subsection, the Secretary shall
23 consult with other appropriate departments and
24 agencies concerning the conduct of the assess-
25 ment. The Secretary shall make a determina-

tion as to whether relief is required under paragraph (2) within 120 days of the date of the Secretary's initiation of an assessment and shall so notify the applicant. If the Secretary has determined that relief is appropriate, the Secretary shall, upon making such a determination, submit the determination for review to appropriate departments and agencies for consultations regarding the findings and selected relief. The Secretary's determination as to eligibility for relief and the nature of the relief to be granted does not require the concurrence or approval of any official, department, or agency to which such a determination is submitted. Not later than 150 days from the date of the Secretary's initiation of an assessment, the Secretary shall respond in writing to the petitioner and submit for publication in the Federal Register, that—

(i) relief is required and—

(I) the requirement of a validated license has been removed;

(II) the control status of all or some of the items in question has

1 been changed so as to eliminate any
2 significant competitive disadvantage;

3 (III) the sale of controlled items
4 have been approved so as to eliminate
5 any significant competitive disadvan-
6 tage;

7 (IV) pursuant to paragraph (5),
8 export controls under this section
9 must be maintained notwithstanding
10 the finding under paragraph (2) and
11 the applicable steps are being taken
12 under subparagraph (C) this para-
13 graph; or

14 (V) the United States rec-
15 ommendation to remove the validated
16 license requirement or change the con-
17 trol status will be submitted to a rel-
18 evant multilateral regime for consider-
19 ation for a period of not more than
20 180 days beginning on the date of the
21 publication; or

22 (ii) a right to relief under paragraph
23 (2) does not exist.

24 In any case in which the submission for publi-
25 cation is not made within 150 days of the date

1 of the Secretary's initiation of an assessment,
2 the Secretary may not thereafter require a li-
3 cense for the export of items that are the sub-
4 ject of the allegation under paragraph (2). In
5 the case of a determination made under sub-
6 section (k)(6)(B)(1)(e) to refer a proposed relief
7 to the relevant multilateral regime, no license
8 for such export may be required after 330 days
9 from the date of the Secretary's initiation of an
10 assessment unless the Secretary shall make a
11 finding under paragraph (4) or grant other re-
12 lief under paragraph (3).

13 (C) NEGOTIATIONS TO ELIMINATE FOR-
14 EIGN AVAILABILITY.—

15 (i) In any case in which export con-
16 trols are maintained under this section
17 pursuant to paragraph (4), the Secretary
18 of State shall actively pursue negotiations
19 with the governments of the appropriate
20 foreign countries for the purpose of elimi-
21 nating such foreign availability or competi-
22 tive disadvantage. No later than the com-
23 mencement of such negotiations, the Sec-
24 retary of State shall notify in writing the
25 Committee on Banking, Housing, and

1 Urban Affairs of the Senate and the Com-
2 mittee on Foreign Affairs of the House of
3 Representatives that he has begun such ne-
4 gotiations and why he believes it is impor-
5 tant that export controls on the items in-
6 volved be maintained to avoid a significant
7 risk to the foreign policy, nonproliferation,
8 or national security interests of the United
9 States.

10 (ii) Whenever the Secretary of State
11 has reason to believe that items subject to
12 export controls by the United States may
13 become available from other countries to
14 target countries and that such availability
15 can be prevented or eliminated by means
16 of negotiations with such other countries,
17 the Secretary of State shall promptly initi-
18 ate negotiations with the governments of
19 such other countries to prevent such for-
20 eign availability.

21 (7) SHARING OF INFORMATION.—Each depart-
22 ment or agency of the United States, including any
23 intelligence agency, and all contractors with any
24 such department or agency, shall, upon the request
25 of the Secretary and consistent with the protection

1 of intelligence sources and methods, furnish informa-
2 tion to the Commerce Department concerning for-
3 eign availability of items subject to export controls
4 under this section. Consistent with the protection of
5 intelligence sources and methods and classification
6 restrictions, each such department or agency shall
7 allow the Commerce Department access to such in-
8 formation from a laboratory or other facility within
9 such department or agency.

10 (8) AVAILABILITY DEFINED.—For the purposes
11 of this subsection, the term “available in fact to tar-
12 get countries” includes production or availability of
13 any item from any country—

14 (A) where the item is not restricted for ex-
15 port to any target country; or

16 (B) where the export restrictions are deter-
17 mined by the Secretary to be ineffective.

18 For purposes of subparagraph (B), the mere inclu-
19 sion of items on a list of items subject to multilat-
20 eral export controls shall not alone constitute credi-
21 ble evidence that a government of a country provides
22 an effective means of controlling the export of such
23 items to target countries.

24 (9) CONGRESSIONAL NOTIFICATION AND RE-
25 PORTING REQUIREMENTS.—The Secretary shall each

1 year notify the Committee on Foreign Affairs of the
2 House of Representatives and the Committee on
3 Banking, Housing, and Urban Affairs of the Senate
4 of all petitions for relief and the status of all such
5 petitions.

6 (l) UNILATERAL CONTROLS PROHIBITED.—

7 (1) Any export controls imposed unilaterally by
8 the United States for purposes adopted by the group
9 known as the Coordinating Committee shall expire 6
10 months after the date of enactment of this para-
11 graph, or 6 months after the export control is im-
12 posed, whichever date is later, except that—

13 (A) any such export controls on those
14 items for which a determination of the Sec-
15 retary that there is no foreign availability has
16 been made under this section before the end of
17 the applicable 6-month period and is in effect
18 may be renewed for periods of not more than
19 6 months each; and

20 (B) any such export controls on those
21 items with respect to which the President, by
22 the end of the applicable 6-month period, is ac-
23 tively pursuing negotiations with other coun-
24 tries to achieve multilateral export controls on

1 those items may be renewed for 2 periods of not
2 more than 6 months each.

3 (2) Export controls on items described in sub-
4 paragraph (A) or (B) of paragraph (1) above may
5 be renewed only if, before each renewal, the Sec-
6 retary submits to the Congress a report setting forth
7 all the controls being renewed and stating the spe-
8 cific reasons for such renewal.

9 (m) INTERNATIONAL OBLIGATIONS.—Notwithstand-
10 ing other provisions of this Act containing limitations on
11 authority to control imports and exports, pursuant to this
12 paragraph and in order to fulfill obligations of the United
13 States pursuant to resolutions of the United Nations, trea-
14 ties, or other international agreements to which the
15 United States is a party, the Secretary, in consultation
16 with appropriate departments and agencies, may impose
17 controls on exports and imports to and from a target coun-
18 try or region. The Secretary may regulate domestic and
19 foreign conduct consistent with the policies of such United
20 Nations resolutions, treaties, and international agree-
21 ments. Such authority shall include, but not be limited to,
22 the authority to prohibit activity such as financing, con-
23 tracting, servicing or employment, to deny access to items
24 in the United States and abroad, to conduct audits of

1 records and inspections of facilities, to compel reports, and
2 to curtail travel.

3 (n) INFORMATION SHARING.—The Secretary and ap-
4 propriate officials of the intelligence community, as deter-
5 mined by the Director of Central Intelligence, and other
6 appropriate Government agencies shall establish a proce-
7 dure for information sharing.

8 (o) DENIED PARTIES, SANCTIONED PARTIES, SPE-
9 Cially DESIGNATED NATIONALS, AND OTHER PARTIES
10 PRESENTING UNACCEPTABLE RISKS OF DIVERSION.—

11 (1) DENIED PARTIES, SANCTIONED PARTIES,
12 SPECIALLY DESIGNATED NATIONALS.—The Sec-
13 retary shall publish parties denied export privileges
14 under this Act, parties sanctioned for prohibited pro-
15 liferation activity under this Act or other statutes,
16 and specially designated nationals named under the
17 International Emergency Economic Powers Act, as
18 amended, 50 U.S.C. 1701, et seq. (1988).

19 (2) OTHER PARTIES.—The Secretary shall
20 maintain a list of parties for whom licenses will be
21 presumptively denied.

22 (p) FREEDOM OF INFORMATION ACT EXEMPTION.—
23 The identity of parties maintained or disclosed pursuant
24 to subsection (o)(2) is not subject to disclosure under sec-
25 tion 552 of title 5, United States Code.

1 **SEC. 6. SHORT SUPPLY CONTROLS.**

2 (a) AUTHORITY.—

3 (1) In order to carry out the policy set forth in
4 section 3(2)(D) of this Act, the President may pro-
5 hibit or curtail the export of any items subject to the
6 jurisdiction of the United States or exported by any
7 person subject to the jurisdiction of the United
8 States. In curtailing exports to carry out the policy
9 set forth in section 3(2)(D) of this Act, the Presi-
10 dent shall allocate a portion of export licenses on the
11 basis of factors other than a prior history of expor-
12 tation. Such factors shall include the extent to which
13 a country engages in equitable trade practices for
14 United States items and treats the United States eq-
15 uitably in times of short supply.

16 (2) Upon imposing quantitative restrictions on
17 exports of any items to carry out the policy set forth
18 in section 3(2)(D) of this Act, the Secretary shall in-
19 clude in a notice published in the Federal Register
20 regarding such restrictions an invitation to all inter-
21 ested parties to submit written comments within 15
22 days from the date of publication on the impact of
23 such restrictions and the method of licensing used to
24 implement them.

25 (3) Notwithstanding subsection 4(h) of this
26 Act, in imposing export controls under this section,

1 the President's authority shall include, but not be
2 limited to, the imposition of export license fees.

3 (b) MONITORING.—

4 (1) In order to carry out the policy set forth in
5 section 3(2)(D) of this Act, the Secretary shall mon-
6 itor exports, and contracts for exports, of any good
7 (other than a commodity which is subject to the re-
8 porting requirements of section 182 of the Agricul-
9 tural Act of 1970 (7 U.S.C. 612c-3)) when the vol-
10 ume of such exports in relation to domestic supply
11 contributes, or may contribute, to an increase in do-
12 mestic prices or a domestic shortage, and such price
13 increase or shortage has, or may have, a serious ad-
14 verse impact on the economy or any sector thereof.
15 Any such monitoring shall commence at a time ade-
16 quate to assure that the monitoring will result in a
17 data base sufficient to enable policies to be devel-
18 oped, in accordance with section 3(2)(D) of this Act,
19 to mitigate a short supply situation or serious infla-
20 tionary price rise or, if export controls are needed,
21 to permit imposition of such controls in a timely
22 manner. Information which the Secretary requires to
23 be furnished in effecting such monitoring shall be
24 confidential, except as provided in paragraph (2) of
25 this subsection.

1 (2) The results of such monitoring shall, to the
2 extent practicable, be aggregated and included in
3 weekly reports setting forth, as to each item mon-
4 itored, actual and anticipated exports, the destina-
5 tion by country, and the domestic and worldwide
6 price, supply, and demand. Such reports may be
7 made monthly if the Secretary determines that there
8 is insufficient information to justify weekly reports.

9 (c) DOMESTICALLY-PRODUCED CRUDE OIL.—

10 (1) Notwithstanding any other provision of this
11 Act and notwithstanding subsection (u) of section 28
12 of the Mineral Leasing Act of 1920 (30 U.S.C. 185),
13 no domestically-produced crude oil transported by
14 pipeline over right-of-way granted pursuant to sec-
15 tion 203 of the TransAlaska Pipeline Authorization
16 Act (43 U.S.C. 1652) (except any such crude oil
17 which (A) is exported to an adjacent foreign country
18 to be refined and consumed therein in exchange for
19 the same quantity of crude oil being exported from
20 that country to the United States, which exchange
21 must result, through convenience or increased effi-
22 ciency of transportation, in lower prices for consum-
23 ers of petroleum products in the United States as
24 described in paragraph (2)(A)(ii) of this subsection;
25 (B) is temporarily exported for convenience or in-

1 creased efficiency of transportation across parts of
2 an adjacent foreign country and reenters the United
3 States; or (C) is transported to Canada, to be
4 consumed therein, in amounts not to exceed an an-
5 nual average of 50,000 barrels per day, in addition
6 to exports under subparagraphs (2)(A) and (2)(B),
7 except that any ocean transportation of such oil
8 shall be by vessels documented under section 12106
9 of title 46, United States Code) may be exported
10 from the United States, or any of its territories and
11 possessions, subject to paragraph (2) of this sub-
12 section.

13 (2) Crude oil subject to the prohibition con-
14 tained in paragraph (1) may be exported only if—

15 (A) the President so recommends to the
16 Congress after making and publishing express
17 findings that exports of such crude oil, includ-
18 ing exchanges—

19 (i) will not diminish the total quantity
20 or quality of petroleum refined within,
21 stored within, or legally committed to be
22 transported to and sold within the United
23 States;

24 (ii) will, within 3 months following the
25 initiation of such exports or changes, result

1 in (I) acquisition costs to the refiners
2 which purchase the imported crude oil
3 being lower than the acquisition costs such
4 refiners would have to pay for the domesti-
5 cally-produced oil in the absence of such
6 an export or exchange, and (II) not less
7 than 75 percent of such savings in costs
8 being reflected in wholesale and retail
9 prices of products refined from such im-
10 ported crude oil;

11 (iii) will be made only pursuant to
12 contracts which may be terminated if the
13 crude oil supplies of the United States are
14 interrupted, threatened, or diminished;

15 (iv) are clearly necessary to protect
16 the national interest; and

17 (v) are in accordance with the provi-
18 sions of this Act; and

19 (B) the President includes such findings in
20 his or her recommendation to the Congress and
21 the Congress, within 60 days after receiving
22 that recommendation, agrees to a joint resolu-
23 tion which approves such exports on the basis
24 of those findings, and which is thereafter en-
25 acted into law.

1 (3) Notwithstanding any other provision of this
2 section or any other section or any other provision
3 of law, including subsection (u) of section 28 of the
4 Mineral Leasing Act of 1920 (30 U.S.C. 185(u)),
5 the President may export oil to any country pursu-
6 ant to a bilateral international oil supply agreement
7 entered into by the United States with such nation
8 before June 25, 1979, or to any country pursuant
9 to the International Emergency Oil Sharing Plan of
10 the International Energy Agency.

11 (d) AGRICULTURE COMMODITIES.—

12 (1) The Authority conferred by this section
13 shall not be exercised for any agricultural commod-
14 ity, including fats and oils or animal hides or skins,
15 without the approval of the Secretary of Agriculture.
16 The Secretary of Agriculture shall not approve the
17 exercise of such authority for any such commodity
18 during any period for which the supply of such com-
19 modity is determined by the Secretary of Agriculture
20 to be in excess of the requirements of the domestic
21 economy except to the extent the President deter-
22 mines that such exercise of authority is required to
23 carry out the policies set forth in subparagraph (B)
24 or (C) of paragraph (2) of section 3 of this Act. The
25 Secretary of Agriculture shall, by exercising the au-

1 thority which the Secretary of Agriculture has under
2 other applicable provisions of law, collect data on ex-
3 port sales of animal hides and skins.

4 (2) Upon approval of the Secretary, in consulta-
5 tion with the Secretary of Agriculture, agricultural
6 commodities purchased by or for use in a foreign
7 country may remain in the United States for export
8 at a later date free from any quantitative limitations
9 on export which may be imposed to carry out the
10 policy set forth in section 3(2)(D) of this Act subse-
11 quent to such approval. The Secretary may not
12 grant such approval unless the Secretary receives
13 adequate assurance and, in conjunction with the
14 Secretary of Agriculture, finds (A) that such com-
15 modities will eventually be exported, (B) that neither
16 the sale nor export thereof will result in an excessive
17 drain of scarce materials and have a serious domes-
18 tic inflationary impact, (C) that storage of such
19 commodities in the United States will not unduly
20 limit the space available for storage of domestically-
21 owned commodities, and (D) that the purpose of such
22 storage is to establish a reserve of such commodities
23 for later use, not including resale to or use by an-
24 other country. The Secretary may issue such regula-

1 tions as may be necessary to implement this para-
2 graph.

3 (3)(A) If the President imposes export controls
4 on any agricultural commodity in order to carry out
5 the policy set forth in paragraph (2)(B), (2)(C),
6 2(D), or (12) of section 3 of this Act, the President
7 shall immediately transmit a report on such action
8 to the Congress, setting forth the reasons for the
9 controls in detail and specifying the periods of time,
10 which may not exceed 1 year, that the controls are
11 proposed to be in effect. If the Congress, within 60
12 days after the date of its receipt of the report,
13 adopts a joint resolution pursuant to paragraph (4)
14 approving the imposition of the export controls, then
15 such controls shall remain in effect for the period
16 specified in the report, or until terminated by the
17 President, whichever occurs first. If the Congress,
18 within 60 days after the date of its receipt of such
19 report, fails to adopt a joint resolution approving
20 such controls, then such controls shall cease to be ef-
21 fective upon the expiration of that 60-day period.

22 (B) The provisions of subparagraph (A) and
23 paragraph (4) shall not apply to export controls—

24 (i) which are extended under this Act if
25 the controls, when imposed, were approved by

1 the Congress under subparagraph (A) and
2 paragraph (4); or

3 (ii) which are imposed on exports to a
4 country as part of the prohibition or curtail-
5 ment of all exports to that country.

6 (4)(A) For purposes of this paragraph, the
7 term “joint resolution” means only a joint resolution
8 the matter after the resolving clause of which is as
9 follows: “That pursuant to section 6(d)(3) of the
10 Export Administration Act of 1979, the President
11 may impose export controls as specified in the report
12 submitted to the Congress on .”,
13 with the blank space being filled with the appro-
14 priate date.

15 (B) On the day on which a report is submitted
16 to the House of Representatives and the Senate
17 under paragraph (3), a joint resolution on the export
18 controls specified in such report shall be introduced
19 (by request) in the House by the chairman of the
20 Committee on Foreign Affairs, for himself and the
21 ranking minority member of the Committee, or by
22 Members of the House designated by the chairman
23 and ranking minority member; and shall be intro-
24 duced (by request) in the Senate by the majority
25 leader of the Senate, for himself and the minority

1 leader of the Senate, or by Members of the Senate
2 designated by the majority leader and minority lead-
3 er of the Senate. If either House is not in session
4 on the day on which such a report is submitted, the
5 joint resolution shall be introduced in that House, as
6 provided in the preceding sentence, on the first day
7 thereafter on which that House is in session.

8 (C) All joint resolutions introduced in the
9 House of Representatives shall be referred to the ap-
10 propriate committee and all joint resolutions intro-
11 duced in the Senate shall be referred to the Commit-
12 tee on Banking, Housing, and Urban Affairs.

13 (D) If the committee of either House to which
14 a joint resolution has been referred has not reported
15 the joint resolution at the end of 30 days after its
16 referral, the committee shall be discharged from fur-
17 ther consideration of the resolution or of any other
18 joint resolution introduced on the same matter.

19 (E) A joint resolution under this paragraph
20 shall be considered in the Senate in accordance with
21 the provisions of section 601(b)(4) of the Inter-
22 national Security Assistance and Arms Export Con-
23 trol Act of 1976 (22 U.S.C. 2151 et seq., Public
24 Law 94-329, June 30, 1976). For the purpose of
25 expediting the consideration and passage of joint

1 resolutions reported or discharged pursuant to the
2 provisions of this paragraph, it shall be in order for
3 the Committee on Rules of the House of Representa-
4 tives to present for consideration a resolution of the
5 House of Representatives providing procedures for
6 the immediate consideration of a joint resolution
7 under this paragraph which may be similar, if appli-
8 cable, to the procedures set forth in section
9 601(b)(4) of the International Security Assistance
10 and Arms Export Control Act of 1976.

11 (F) In the case of a joint resolution described
12 in subparagraph (A), if, before the passage by one
13 House of a joint resolution of that House, that
14 House receives a resolution on the same matter from
15 the other House, then—

16 (i) the procedure in the House shall be the
17 same as if no joint resolution has been received
18 from the other House; but

19 (ii) the vote on final passage shall be on
20 the joint resolution of the other House.

21 (5) In the computation of the period of 60 days
22 referred to in paragraph (3) and the period of 30
23 days referred to in subparagraph (D) of paragraph
24 (4), there shall be excluded the days on which either
25 House of Congress is not in session because of an

1 adjournment of more than 3 days to a day certain
2 or because of an adjournment of the Congress sine
3 die.

4 (e) BARTER AGREEMENTS.—

5 (1) The exportation pursuant to a barter agree-
6 ment of any items which may lawfully be exported
7 from the United States, for any items which may
8 lawfully be imported into the United States, may be
9 exempted, in accordance with paragraph (2) of this
10 subsection, from any quantitative limitation on ex-
11 ports (other than any reporting requirement) im-
12 posed to carry out the policy set forth in section
13 3(2)(D) of this Act.

14 (2) The Secretary shall grant an exemption
15 under paragraph (1) if the Secretary finds, after
16 consultation with the appropriate department or
17 agency of the United States, that—

18 (A) for the period during which the barter
19 agreement is to be performed—

20 (i) the average annual quantity of the
21 items to be exported pursuant to the bar-
22 ter agreement will not be required to sat-
23 isfy the average amount of such items esti-
24 mated to be required annually by the do-

1 domestic economy and will be surplus there-
2 to; and

3 (ii) the average annual quantity of the
4 items to be imported will be less than the
5 average amount of such items estimated to
6 be required annually to supplement domes-
7 tic production; and

8 (B) the parties to such barter agreement
9 have demonstrated adequately that they intend,
10 and have the capacity, to perform such barter
11 agreement.

12 (3) For purposes of this subsection, the term
13 “barter agreement” means any agreement which is
14 made for the exchange, without monetary consider-
15 ation, of any items produced in the United States
16 for any items produced outside of the United States.

17 (4) This subsection shall apply only to barter
18 agreements entered into after September 30, 1979.

19 (f) UNPROCESSED RED CEDAR.—No unprocessed
20 western red cedar logs (*Thuja plicata*) harvested from
21 State or Federal lands may be exported from the United
22 States.

23 (1) Unprocessed western red cedar logs shall
24 not be considered to be an agricultural commodity
25 for purposes of subsection (d) of this section.

1 (2) As used in this subsection, the term “un-
2 processed western red cedar” means red cedar tim-
3 ber which has not been processed into—

4 (A) lumber of American Lumber Stand-
5 ards Grades of Number 3 dimension or better,
6 or Pacific Lumber Inspection Bureau Export
7 R-List Grades of Number 3 common or better;

8 (B) chips, pulp, and pulp products;

9 (C) veneer and plywood;

10 (D) poles, posts, or pilings cut or treated
11 with preservative for use as such and not in-
12 tended to be further processed; or

13 (E) shakes and shingles.

14 (3) The State of Alaska is exempt from the pro-
15 visions of this subsection (Public Law No. 96–126,
16 93 Stat. 954, section 308 (1979)).

17 (g) EFFECT OF CONTROLS ON EXISTING CON-
18 TRACTS.—The export restrictions contained in subsection
19 (f) of this section and any export controls imposed under
20 this section shall not affect any contract to harvest un-
21 processed western red cedar from State lands which was
22 entered into before October 1, 1979, and the performance
23 of which would make the red cedar available for export.
24 Any export controls imposed under this section on any ag-
25 ricultural commodity (including fats, oils, and animal

1 hides and skins) or on any forest product or fishery prod-
 2 uct, shall not affect any contract to export entered into
 3 before the date on which such controls are imposed. For
 4 purposes of this subsection, the term “contract to export”
 5 includes, but is not limited to, an export sales agreement
 6 and an agreement to invest in an enterprise which involves
 7 the export of goods or technology.

8 (h) OIL EXPORTS FOR USE BY UNITED STATES
 9 MILITARY FACILITIES.—For purposes of subsection (c) of
 10 this section, and for purposes of any export controls im-
 11 posed under this Act, shipments of crude oil, refined petro-
 12 leum products, or partially refined petroleum products
 13 from the United States for use by the Department of De-
 14 fense or United States-supported installations or facilities
 15 shall not be considered to be exports.

16 **SEC. 7. FOREIGN BOYCOTTS.**

17 (a) PROHIBITIONS AND EXCEPTIONS.—

18 (1) For the purpose of implementing the poli-
 19 cies set forth in subparagraph (A) and (B) of para-
 20 graph (14) of section 3 of this Act, the President
 21 shall issue regulations prohibiting any United States
 22 person, with respect to his or her activities in the
 23 interstate or foreign commerce of the United States,
 24 from taking or knowingly agreeing to take any of
 25 the following actions with the intent to comply with,

1 further, or support any boycott fostered or imposed
2 by a foreign country against a country which is
3 friendly to the United States and which is not itself
4 the object of any form of boycott pursuant to United
5 States law or regulation:

6 (A) Refusing, or requiring any other per-
7 son to refuse, to do business with or in the boy-
8 cotted country, with any business concern orga-
9 nized under the laws of the boycotted country,
10 with any national or resident of the boycotted
11 country, or with any other person, pursuant to
12 an agreement with, a requirement of, or a re-
13 quest from or on behalf of the boycotting coun-
14 try. The mere absence of a business relationship
15 with or in the boycotted country with any busi-
16 ness concern organized under the laws of the
17 boycotted country, with any national or resident
18 of the boycotted country, or with any other per-
19 son, does not indicate the existence of the in-
20 tent required to establish a violation of regula-
21 tions issued to carry out this subparagraph.

22 (B) Refusing, or requiring any other per-
23 son to refuse, to employ or otherwise discrimi-
24 nating against any United States person on the
25 basis of race, religion, sex, or national origin of

1 that person or of any owner, officer, director, or
2 employee of such person.

3 (C) Furnishing information with respect to
4 the race, religion, sex, or national origin of any
5 United States person or of any owner, officer,
6 director, or employee of such person.

7 (D) Furnishing information about whether
8 any person has, has had, or proposes to have
9 any business relationship (including a relation-
10 ship by way of sale, purchase, legal, or commer-
11 cial representation, shipping or other transport,
12 insurance, investment, or supply) with or in the
13 boycotted country, with any business concern
14 organized under the laws of the boycotted coun-
15 try, with any national or resident of the boy-
16 cotted country, or with any other person known
17 or believed to be restricted from having any
18 business relationship with or in the boycotted
19 country. Nothing in this paragraph shall pro-
20 hibit the furnishing of normal business informa-
21 tion in a commercial context as defined by the
22 Secretary.

23 (E) Furnishing information about whether
24 any person is a member of, has made contribu-
25 tion to, or is otherwise associated with or in-

1 involved in the activities of any charitable or fra-
2 ternal organization which supports the boy-
3 cotted country.

4 (F) Paying, honoring, confirming, or other-
5 wise implementing a letter of credit which con-
6 tains any condition or requirement compliance
7 with which is prohibited by regulations issued
8 pursuant to this paragraph, and no United
9 States person shall, as a result of the applica-
10 tion of this paragraph, be obligated to pay or
11 otherwise honor or implement such letter of
12 credit.

13 (2) Regulations issued pursuant to paragraph
14 (1) shall provide exceptions for—

15 (A) complying or agreeing to comply with
16 requirements (i) prohibiting the import of items
17 or services from the boycotted country or items
18 produced or services provided by any business
19 concern organized under the laws of the boy-
20 cotted country or by nationals or residents of
21 the boycotted country, or (ii) prohibiting the
22 shipment of items to the boycotted country on
23 a carrier of the boycotted country, or by a route
24 other than that prescribed by the boycotting
25 country or the recipient of the shipment;

1 (B) complying or agreeing to comply with
2 import and shipping document requirements
3 with respect to the country of origin, the name
4 of the carrier and route of shipment, the name
5 of the supplier of the shipment or the name of
6 the provider of other services, except that no in-
7 formation knowingly furnished or conveyed in
8 response to such requirements may be stated in
9 negative, blacklisting, or similar exclusionary
10 terms, other than with respect to carriers or
11 route of shipment as may be permitted by such
12 regulations in order to comply with precaution-
13 ary requirements protecting against war risks
14 and confiscation;

15 (C) complying or agreeing to comply in the
16 normal course of business with the unilateral
17 and specific selection by a boycotting country,
18 or national or resident thereof, of carriers, in-
19 surers, suppliers of services to be performed
20 within the boycotting country or specific items
21 which, in the normal course of business, are
22 identifiable by source when imported into the
23 boycotting country;

24 (D) complying or agreeing to comply with
25 export requirements of the boycotting country

1 relating to shipments or transshipment of ex-
2 ports to the boycotted country, to any business
3 concern of or organized under the laws of the
4 boycotted country, or to any national or resi-
5 dent of the boycotted country;

6 (E) compliance by an individual or agree-
7 ment by an individual to comply with the immi-
8 gration or passport requirements of any country
9 with respect to such individual or any member
10 of such individual's family or with requests for
11 information regarding requirements of employ-
12 ment of such individual within the boycotting
13 country; and

14 (F) compliance by a United States person
15 resident in a foreign country or agreement by
16 such person to comply with the laws of the
17 country with respect to his or her activities ex-
18 clusively therein, and such regulations may con-
19 tain exceptions for such resident complying with
20 the laws or regulations of the foreign country
21 governing imports into such country of
22 trademarked, trade named, or similarly specifi-
23 cally identifiable products, or components of
24 products for his or her own use, including the

1 performance of contractual services within that
2 country, as may be defined by such regulations.

3 (3) Regulations issued pursuant to paragraphs
4 (2)(C) and (2)(F) shall not provide exceptions from
5 paragraphs (1)(B) and (1)(C).

6 (4) Nothing in this subsection may be con-
7 strued to supersede or limit the operation of the
8 antitrust or civil rights laws of the United States.

9 (5) This section shall apply to any transaction
10 or activity undertaken, by or through a United
11 States person or any other person, with intent to
12 evade the provisions of this section as implemented
13 by the regulations issued pursuant to this sub-
14 section, and such regulations shall expressly provide
15 that the exceptions set forth in paragraph (2) shall
16 not permit activities or agreements (expressed or im-
17 plied by a course of conduct, including a pattern of
18 responses) otherwise prohibited, which are not with-
19 in the intent of such exceptions.

20 (b) REGULATIONS.—

21 (1) In addition to the regulations issued pursu-
22 ant to subsection (a) of this section, regulations is-
23 sued under this subsection of this Act shall imple-
24 ment the policies set forth in section 3(14).

1 (2) Such regulations shall require that any
2 United States person receiving a request for the fur-
3 nishing of information, the entering into or imple-
4 menting of agreements, or the taking of any other
5 action referred to in section 3(14) shall report that
6 fact to the Secretary, together with such other infor-
7 mation concerning such request as the Secretary
8 may require for such action as the Secretary consid-
9 ers appropriate for carrying out the policies of that
10 section. Such person shall also report to the Sec-
11 retary whether such person intends to comply and
12 whether such person has complied with such request.
13 Any report filed pursuant to this paragraph shall be
14 made available promptly for public inspection and
15 copying, except that information regarding the quan-
16 tity, description, and value of any items to which
17 such report relates may be kept confidential if the
18 Secretary determines that disclosure thereof would
19 place the United States person involved at a com-
20 petitive disadvantage. The Secretary shall periodi-
21 cally transmit summaries of the information con-
22 tained in such reports to the Secretary of State for
23 such action as the Secretary of State, in consultation
24 with the Secretary, considers appropriate for carry-

1 ing out the policies set forth in section 3(14) of this
2 Act.

3 (c) PREEMPTION.—The provisions of this section and
4 the regulations issued pursuant thereto shall preempt any
5 law, rule, or regulation of any of the several States or the
6 District of Columbia, or any of the territories or posses-
7 sions of the United States, or of any governmental subdivi-
8 sion thereof, which law, rule, or regulation pertains to par-
9 ticipation in, compliance with, implementation of, or the
10 furnishing of information regarding restrictive trade prac-
11 tices or boycotts fostered or imposed by foreign countries
12 against other countries.

13 **SEC. 8. PROCEDURES FOR PROCESSING EXPORT LICENSE**
14 **APPLICATIONS; OTHER INQUIRIES.**

15 (a) PRIMARY RESPONSIBILITY OF THE SEC-
16 RETARY.—

17 (1) All export license applications required
18 under this Act shall be submitted by the applicant
19 to the Secretary. All determinations on any such ap-
20 plications shall be made by the Secretary, subject to
21 the procedures provided in this section.

22 (2) To the extent necessary, the Secretary shall
23 seek information and recommendations from the
24 Government departments and agencies concerned
25 with factors having an important bearing on exports

1 administered under this Act. Such departments and
2 agencies shall cooperate fully and promptly in ren-
3 dering information and recommendations.

4 (3) In regulations that implement this section,
5 the Secretary shall describe the procedures required
6 by this section, the responsibilities of the Secretary
7 and of other departments and agencies in reviewing
8 applications, the rights of the applicant, and the ex-
9 tent of any multilateral review of a given license
10 application.

11 (4) In calculating the processing times set forth
12 in this section, the Secretary shall use calendar days;
13 provided that if the final day for a required action
14 falls on a weekend or holiday, that action shall be
15 taken no later than the following business day.

16 (5) In reviewing applications for validated ex-
17 port licenses, the Secretary may in each case con-
18 sider the reliability of the parties to the proposed ex-
19 port. In making such an evaluation, the Secretary
20 may consider all sources of information, including
21 intelligence information. However, the consideration
22 of intelligence information in connection with the
23 evaluation of the reliability of parties shall not au-
24 thorize the direct or indirect disclosure of classified

1 information or sources and methods of gathering
2 classified information.

3 (b) INITIAL SCREENING.—

4 (1) Upon receipt of any export license applica-
5 tion, the Secretary shall include receipt and status
6 information regarding the application in the records
7 of the Department.

8 (2) Within 9 days of receipt of any license ap-
9 plication, the Secretary shall—

10 (A) contact the applicant if the application
11 is improperly completed or if additional infor-
12 mation is required, and hold the application for
13 a reasonable time while the applicant provides
14 the necessary corrections or information. Such
15 time shall not be counted in calculating the
16 time periods prescribed in this section;

17 (B) refer the application and all necessary
18 recommendations and analyses by the Secretary
19 to all other agencies, when such referral is re-
20 quested, and forward to the agencies any rel-
21 evant information submitted by the applicant
22 that could not be reduced to electronic form;
23 and

24 (C) assure the stated classification on the
25 application is correct; return the application if

1 a validated license is not required; and, if refer-
2 ral to other agencies is not requested, grant the
3 application or notify the applicant of the Sec-
4 retary's intent to deny the application.

5 (c) ACTION BY OTHER DEPARTMENTS AND AGEN-
6 CIES.—

7 (1) At the direction of the President, the Sec-
8 retary shall refer license applications to appropriate
9 departments and agencies to make recommendations
10 and provide information to the Secretary.

11 (2) Reviewing agencies shall organize their re-
12 sources and units to plan for the prompt and expedi-
13 tious internal dissemination of export license appli-
14 cations, if necessary, so as to avoid delays in re-
15 sponding to the Secretary's request for information
16 and recommendations.

17 (3) Each referral agency or department shall
18 specify to the Secretary any information that is not
19 in the application that would be required to make a
20 determination, and the Secretary shall promptly re-
21 quest such information from the applicant. The time
22 that may elapse between the date the information is
23 requested from the applicant and the date the infor-
24 mation is received by the Secretary shall not be

1 counted in calculating the time periods prescribed in
2 this section.

3 (4) Within 30 days of receipt of a referral, the
4 agency or department shall provide the Secretary
5 with a recommendation either to approve the license
6 or to deny the license. As appropriate, such rec-
7 ommendation shall be with the benefit of consulta-
8 tion and discussions in interagency groups estab-
9 lished to provide expertise and coordinate inter-
10 agency consultation. A recommendation that the
11 Secretary deny a validated license shall include a
12 statement of reasons that are consistent with the
13 provisions of this Act, and shall cite both the statu-
14 tory and the regulatory basis for the recommenda-
15 tion to deny. A department or agency that fails to
16 provide a recommendation within thirty days with a
17 statement of reasons and the statutory and regu-
18 latory basis shall be deemed to have no objection to
19 the decision of the Secretary.

20 (5) An interagency committee shall be estab-
21 lished by and the chairman selected by the Secretary
22 to review initially all license applications on which
23 the reviewing agencies are not in agreement. The
24 chairman of such committee shall consider the rec-
25 ommendations of the reviewing agencies and inform

1 them of his or her decision. Appeals from such deci-
2 sions may be made in writing by an official of such
3 department or agency who is appointed by the Presi-
4 dent by and with the advice and consent of the Sen-
5 ate, or an officer properly acting in such capacity,
6 consistent with procedures established by the Presi-
7 dent in accordance with subsection (d).

8 (6) Upon receiving all comments from other de-
9 partments and agencies regarding an application
10 upon which there is no disagreement, or 49 days fol-
11 lowing receipt of a license application upon which
12 there has been disagreement, whichever comes first,
13 the Secretary shall either—

14 (A) approve the application and issue the
15 license; or

16 (B) notify the applicant of the intent to
17 deny the license; or

18 (C) notify the applicant the application has
19 been referred to a process established by the
20 President to resolve matters in dispute.

21 (d) INTERAGENCY RESOLUTION.—The President
22 may establish a process for the review and determination
23 of export license applications as to which a reviewing agen-
24 cy has objected pursuant to subsection (c). Any such proc-
25 ess shall (1) be chaired by the Secretary or his designee;

1 (2) insure that license applications are resolved or referred
2 to the President no later than 90 days from the date of
3 filing of the license application; and (3) provide that a de-
4 partment or agency that fails to take a timely position
5 shall be deemed to have no objection to the pending deci-
6 sion.

7 (e) ACTIONS BY THE SECRETARY.—

8 (1) When no referral to other departments or
9 agencies is required, the Secretary shall issue a li-
10 cense or notify the applicant of the intent to deny
11 within nine days of receipt of the application.

12 (2) In cases where the Secretary has deter-
13 mined that an application should be denied, the ap-
14 plicant shall be informed in writing of—

15 (A) the determination to deny;

16 (B) the statutory and regulatory basis for
17 the proposed denial;

18 (C) what, if any, modifications in or re-
19 strictions on the items for which the license was
20 sought would allow such export to be compat-
21 ible with export controls imposed under this
22 Act, and which officer or employee of the De-
23 partment of Commerce would be in a position
24 to discuss modifications or restrictions with the
25 applicant;

1 (D) to the extent consistent with the na-
2 tional security and foreign policy of the United
3 States, the specific considerations that led to
4 the determination to deny the application; and
5 (E) the availability of appeal procedures.

6 The Secretary shall allow the applicant 20 days to
7 respond to the determination before the license ap-
8 plication is denied.

9 (3) The Secretary and the applicant may, at
10 any time, agree mutually to suspend the time peri-
11 ods prescribed by this section in order to negotiate
12 modifications to the application and obtain agree-
13 ment to such modifications from the foreign parties
14 to the transaction.

15 (f) MULTILATERAL CONTROLS.—When an applica-
16 tion recommended for approval must be submitted to a
17 multilateral review process, pursuant to a multilateral re-
18 gime, formal or informal, to which the United States is
19 a party, the application shall be referred to the multilat-
20 eral regime within 5 days of the decision to approve. Any
21 such application shall be considered in accordance with the
22 review procedures established by the relevant multilateral
23 export control regime, and the license shall be issued or
24 a notice of intent to deny issued within 5 days of receipt
25 of a decision by the multilateral regime.

1 (g) EXCEPTIONS FROM REQUIRED TIME PERIODS.—

2 All license applications shall be resolved or referred to the
3 President no later than 90 days from the date of filing
4 of the license application. The following actions related to
5 processing an application shall not be counted in calculat-
6 ing the time periods prescribed in this section:

7 (1) AGREEMENT OF THE APPLICANT.—Delays
8 in processing required by unusually complex tech-
9 nical review or by need to complete a high-level pol-
10 icy review, when the Secretary and the applicant
11 mutually agree to the delay.

12 (2) PRELICENSE CHECKS.—Prelicense checks
13 through government channels that may be required
14 to establish the identity and reliability of the recipi-
15 ent of items controlled under this Act, provided—

16 (A) the need for such prelicense check is
17 established by the Secretary, or by another de-
18 partment or agency, if the request for
19 prelicense check is made by such department or
20 agency;

21 (B) the request for such prelicense check is
22 sent by the Secretary within 5 days for the de-
23 termination that the prelicense check is re-
24 quired; and

1 (C) the analysis of the response to the re-
2 quest for prelicense check is completed by the
3 Secretary within 5 days.

4 (3) REQUESTS FOR GOVERNMENT-TO-GOVERN-
5 MENT ASSURANCES.—Requests for government-to-
6 government assurances of suitable end use of items
7 approved for export, when failure to obtain such as-
8 surances would result in rejection of the application,
9 provided that the request for such assurances is sent
10 to the Secretary of State within 5 days of the deter-
11 mination that the assurances are required, provided
12 the Secretary of State initiates the request of the
13 relevant government within 10 days thereafter, and
14 provided the license is issued within 5 days of re-
15 ceipt by the Secretary of the requested assurances.
16 Whenever such prelicense checks and assurances are not
17 requested within the time periods set forth above, they
18 must be accomplished within the time periods established
19 by this section.

20 (4) MULTILATERAL REVIEW.—Multilateral re-
21 view of a license application as provided for in sub-
22 section (f) so long as such multilateral review is re-
23 quired by the relevant multilateral regime.

1 (5) CONGRESSIONAL NOTIFICATION.—Such
2 time as required for mandatory Congressional notifi-
3 cations under this Act.

4 (h) APPEALS.—

5 (1) The Secretary shall establish appropriate
6 procedures for any applicant to appeal to the Sec-
7 retary the denial or an export license application or
8 other administrative action.

9 (2) In any case in which any action prescribed
10 in this section is not taken on the license application
11 within the time periods established by this section
12 (except in the case of a time period extended under
13 subsection (g)(4) of which the applicant is notified),
14 the applicant may file a petition with the Secretary
15 requesting compliance with the requirements of this
16 section. When such petition is filed, the Secretary
17 shall take immediate steps to correct the situation
18 giving rise to the petition and shall immediately no-
19 tify the applicant of such steps.

20 (3) If, within 20 days after a petition is filed
21 under paragraph (2), the processing of the applica-
22 tion has not been brought into conformity with the
23 requirements of this section, or the application has
24 been brought into conformity with such require-
25 ments but the Secretary has not so notified the ap-

1 plicant, the applicant may bring an action in an ap-
2 propriate United States district court for an order
3 requiring compliance with the temporal requirements
4 of this section. The United States district courts
5 shall have jurisdiction to provide such relief, as ap-
6 propriate.

7 (i) CLASSIFICATION REQUESTS AND OTHER INQUIR-
8 IES.—

9 (1) In any case in which the Secretary receives
10 a written request asking for the proper classification
11 of an item on the Control List, the Secretary shall,
12 within 14 days after receipt of the request, inform
13 the person making the request of the proper classi-
14 fication.

15 (2) In any case in which the Secretary receives
16 a written request for information about the applica-
17 bility of export license requirements under this Act
18 to a proposed export transaction or series of trans-
19 actions, the Secretary shall, within 30 days after the
20 receipt of the request, reply with that information to
21 the person making the request.

22 **SEC. 9. VIOLATIONS.**

23 (a) CRIMINAL PENALTIES.—

24 (1) VIOLATIONS BY AN INDIVIDUAL.—Except as
25 provided in paragraph (3) below, any individual who

1 knowingly violates or conspires to or attempts to vio-
2 late any provision of this Act or any regulation, li-
3 cense, or order issued thereunder shall be fined not
4 more than 5 times the value of the exports involved
5 or \$500,000 per violation, whichever is greater, or
6 imprisoned not more than 10 years, or both.

7 (2) VIOLATION BY A PERSON OTHER THAN AN
8 INDIVIDUAL.—Except as provided in paragraph (3)
9 below, any person other than an individual who
10 knowingly violates or conspires to or attempts to vio-
11 late any provision of this Act or any regulation, li-
12 cense or order issued thereunder shall be fined not
13 more than 10 times the value of the exports involved
14 or \$1,000,000 per violation, whichever is greater.

15 (3) ANTIBOYCOTT VIOLATIONS.—Any individual
16 who knowingly violates or conspires to or attempts
17 to violate any provision of section 7 of this Act con-
18 cerning foreign boycotts or any regulation or order
19 issued thereunder shall be fined not more than 5
20 times the value of the exports involved or \$250,000
21 per violation, whichever is greater, or imprisoned not
22 more than 10 years, or both. Any person other than
23 an individual who knowingly violates or conspires to
24 or attempts to violate any provision of section 7 of
25 this Act or any regulation or order issued there-

1 under shall be fined not more than 5 times the value
2 of the exports involved or \$500,000 per violation,
3 whichever is greater.

4 (b) FORFEITURE OF PROPERTY INTEREST AND PRO-
5 CEEDS.—

6 (1) Any person who is convicted under sub-
7 section (a) (1) or (2) shall, in addition to any other
8 penalty, forfeit to the United States—

9 (A) any of that person's interest in, secu-
10 rity of, claim against, or property or contractual
11 rights of any kind in the goods or tangible
12 items that were the subject of the violation;

13 (B) any of that person's interest in, secu-
14 rity of, claim against, or property or contractual
15 rights of any kind in tangible property that was
16 used in the export or attempt to export that
17 was the subject of the violation; and

18 (C) any of that person's property con-
19 stituting, or derived from, any proceeds ob-
20 tained directly or indirectly as a result of the
21 violation.

22 (2) The procedures in any forfeiture under this
23 subsection, and the duties and authority of the
24 courts of the United States and the Attorney Gen-
25 eral with respect to any forfeiture action under this

1 subsection or with respect to any property that may
2 be subject to forfeiture under this subsection, shall
3 be governed by the provisions of chapter 46 of title
4 18, United States Code.

5 (c) CIVIL PENALTIES; ADMINISTRATIVE SANC-
6 TIONS.—

7 (1) The Secretary may impose a civil penalty
8 not to exceed \$250,000 for each violation of this Act
9 or any regulation, license or order issued under this
10 Act, either in addition to or in lieu of any other li-
11 ability or penalty which may be imposed, except that
12 the civil penalty for each such violation involving
13 section 7 of this Act concerning foreign boycotts
14 may not exceed \$50,000.

15 (2) The Secretary may deny the export privi-
16 leges of any person, including suspending or revok-
17 ing the authority of any person to export or receive
18 any item subject to this Act, for any violation of the
19 provisions of this Act or any regulation, license or
20 order issued under this Act.

21 (d) PROCEDURES RELATING TO CIVIL PENALTIES
22 AND SANCTIONS.—

23 (1) Any administrative sanction imposed under
24 subsection (c) above may be imposed only after no-
25 tice and opportunity for an agency hearing on the

1 record in accordance with sections 554 through 557
2 of title 5, United States Code. The imposition of any
3 such administrative sanction shall be subject to judi-
4 cial review in accordance with sections 701 through
5 706 of title 5, United States Code.

6 (2) Any charging letter or other document initi-
7 ating administrative proceedings for the imposition
8 of sanctions for violations of the regulations issued
9 pursuant to section 7(a) of this Act shall be made
10 available for public inspection and copying.

11 (e) PAYMENT OF CIVIL PENALTIES.—The payment
12 of any civil penalty imposed pursuant to subsection (c)
13 may be made a condition, for a period not exceeding 1
14 year after the penalty has become due but has not been
15 paid, to the granting, restoration, or continuing validity
16 of any export license, permission, or privilege granted or
17 to be granted to the person upon whom such penalty is
18 imposed. In addition, the payment of any civil penalty im-
19 posed under subsection (c) may be deferred or suspended
20 in whole or in part for a period of time no longer than
21 any probation period (which may exceed 1 year) that may
22 be imposed upon such person. Such deferral or suspension
23 shall not operate as a bar to the collection of the penalty
24 in the event that the conditions of the suspension, deferral,
25 or probation are not fulfilled.

1 (f) REFUNDS.—Any amount paid in satisfaction of
2 any civil penalty imposed pursuant to subsection (c) shall
3 be covered into the Treasury as a miscellaneous receipt.
4 The head of the department or agency concerned may, in
5 his discretion, refund any such civil penalty imposed pur-
6 suant to subsection (c), within 2 years after payment, on
7 the ground of a material error of fact or law in the imposi-
8 tion of the penalty. Notwithstanding section 1346(a) of
9 title 28, United States Code, no action for the refund of
10 any such penalty may be maintained in any court.

11 (g) COLLECTION—If any person fails to pay a civil
12 penalty imposed pursuant to subsection (c) of this Act,
13 the Secretary may ask the Attorney General to bring a
14 civil action in an appropriate district court to recover the
15 amount imposed (plus interest at currently prevailing
16 rates from the date of the final order). Any such action
17 must be commenced within 5 years after the order impos-
18 ing the civil penalty becomes final. In such an action, the
19 validity, amount, and appropriateness of such penalty
20 shall not be subject to review.

21 (h) PRIOR CONVICTIONS.—

22 (1) At the discretion of the Secretary, export
23 privileges under this Act may be denied for a period
24 of up to 10 years from the date of conviction to any
25 person convicted of a violation of this Act or its

1 predecessor statute, the Export Administration Act
2 of 1979; the International Emergency Economic
3 Powers Act, title 50, United States Code, sections
4 1701–1706; sections 793, 794, 798, of title 18,
5 United States Code; section 4(b) of the Internal Se-
6 curity Act of 1950, title 50, United States Code, sec-
7 tion 783(b); section 16 of the Trading with the
8 Enemy Act, title 50, United States Code appendix,
9 section 16; section 38 of the Arms Export Control
10 Act, title 22, United States Code, section 2778; any
11 regulation, license, or order issued under any of the
12 above statutes; or section 371 or 1001 of title 18,
13 United States Code, if the conviction arises out of
14 an activity subject to 1 or more of the statutes enu-
15 merated above. The Secretary may also revoke any
16 export license under this Act in which such person
17 had an interest at the time of the conviction.

18 (2) The Secretary may exercise the authority
19 under paragraph (1) with respect to any person re-
20 lated, through affiliation, ownership, control, or posi-
21 tion of responsibility, to any person convicted of any
22 violation of a law set forth in paragraph (1), upon
23 a showing of such relationship with the convicted
24 person, after providing notice and opportunity for
25 hearing.

1 (i) STATUTE OF LIMITATIONS.—Any case in which
2 a civil penalty or other administrative sanction (other than
3 a temporary denial order) is sought under section 9(c) of
4 this Act must be instituted within 5 years of the date from
5 the alleged violation, except that, in any case in which a
6 criminal indictment alleging a violation of this Act is re-
7 turned within the time limits prescribed by law for the
8 institution of such action, the statute of limitations for
9 bringing a proceeding to impose a civil penalty or other
10 administrative sanction under this Act shall, upon the re-
11 turn of the criminal indictment, be tolled against all per-
12 sons named as a defendant. The tolling of the statute of
13 limitations shall continue for a period of not more than
14 6 months from the date a conviction is entered or the in-
15 dictment is dismissed.

16 (j) IMPOSITION OF TEMPORARY DENIAL ORDERS.—

17 (1) In any case in which there is reasonable
18 cause to believe that a person is engaged in or is
19 about to engage in any act or practices which con-
20 stitutes or would constitute a violation of the Act, or
21 any regulation, order, or license issued under the
22 Act, or in any case in which a criminal indictment
23 has been returned against a person alleging a viola-
24 tion of the Act or any of the statutes listed in sec-
25 tion 9(h) of the Act, the Secretary may, without a

1 hearing, issue an offer temporarily denying that per-
2 son's United States export privileges (hereinafter in
3 this subsection referred to as a "temporary denial
4 order"). A temporary denial order may be effective
5 for no longer than 180 days, but may be renewed by
6 the Secretary, following notice and an opportunity
7 for a hearing, for additional 180-day periods.

8 (2) The person or persons subject to the issu-
9 ance or renewal of a temporary denial order may ap-
10 peal the issuance or renewal of the temporary denial
11 order, supported by briefs and other material, to an
12 administrative law judge who shall, within 15 work-
13 ing days after the appeal is filed, issue a decision af-
14 firming, modifying, or vacating the temporary denial
15 order. The temporary denial order shall be affirmed
16 if it is shown that there is reasonable cause to be-
17 lieve that the person subject to the order is engaged
18 in or is about to engage in any act or practice which
19 constitutes or would constitute a violation of the
20 Act, or any regulation, order, or license issued under
21 the Act, or if it is shown that a criminal indictment
22 has been returned against the person subject to the
23 order alleging a violation of the Act or any of the
24 statutes listed in section 9(h) of the Act. The deci-
25 sion of the administrative law judge shall be final

1 unless, within 10 working days from the date of the
2 administrative law judge's decision, an appeal is
3 filed with the Secretary. On appeal, the Secretary
4 shall either affirm, modify, reverse, or vacate the de-
5 cision of the administrative law judge by written
6 order within 10 working days after receiving the ap-
7 peal. The written order of the Secretary shall be
8 final and is not subject to judicial review except as
9 provided in paragraph (3). The materials submitted
10 to the administrative law judge and the Secretary
11 shall constitute the administrative record for pur-
12 poses of review by the court.

13 (3) An order of the Secretary affirming, in
14 whole or in part, the issuance or renewal of a tem-
15 porary denial order may, within 15 days after the
16 order is issued, be appealed by a person subject to
17 the order to the United States Court of Appeals for
18 the District of Columbia Circuit, which shall have
19 jurisdiction of the appeal. The court may review only
20 those issues necessary to determine whether the is-
21 suance of the temporary denial order was based on
22 reasonable cause to believe that the person subject
23 to the order was engaged in or was about to engage
24 in any act or practice which constitutes or would
25 constitute a violation of the Act, or any regulation,

1 order or license issued under the Act, or if a crimi-
2 nal indictment has been returned against the person
3 subject to the order alleging a violation of the Act
4 or any of the statutes listed in section 9(h) of the
5 Act. The court shall vacate the Secretary's order if
6 the court finds that the Secretary's order is arbi-
7 trary, capricious, an abuse of discretion, or other-
8 wise not in accordance with law.

9 (k) VIOLATIONS DEFINED BY REGULATION.—Noth-
10 ing in this section shall limit the power of the Secretary
11 to define by regulation violations under this Act.

12 (l) OTHER AUTHORITIES.—Nothing in subsection
13 (c), (e), (f), (g), or (i) limits—

14 (1) the availability of other administrative or
15 judicial remedies with respect to violations of this
16 Act, or any regulation, order, or license issued under
17 this Act;

18 (2) the authority to compromise and settle ad-
19 ministrative proceedings brought with respect to vio-
20 lations of this Act, or any regulation, order, or li-
21 cense issued under this Act; or

22 (3) the authority to compromise, remit, or miti-
23 gate seizures and forfeitures pursuant to section
24 1(b) of title VI of the Act of June 15, 1917, title
25 22, United States Code, section 401(b).

1 **SEC. 10. ENFORCEMENT.**

2 (a) GENERAL AUTHORITY AND DESIGNATION.—

3 (1) The Secretary, in consultation with the Sec-
4 retary of Treasury and the heads of other appro-
5 priate departments and agencies, shall be responsible
6 for providing policy guidance on the enforcement of
7 this Act.

8 (2) To the extent necessary or appropriate to
9 the enforcement of this Act or to the imposition of
10 any penalty, forfeiture, or liability arising under the
11 Export Administration Act of 1979, as amended, of-
12 ficers or employees of the Department of Commerce
13 designated by the Secretary and officers and employ-
14 ees of the United States Customs Service designated
15 by the Commissioner may exercise the enforcement
16 authorities described in paragraph (3). In carrying
17 out these enforcement authorities—

18 (A) the Commissioner of Customs, and em-
19 ployees of the United States Customs Service
20 designated by the Commissioner, may make in-
21 vestigations within or outside the United States
22 and at those ports of entry or exit from the
23 United States where officers of the United
24 States Customs Service are authorized by law
25 to carry out such enforcement responsibilities.
26 Subject to paragraph (3), the United States

1 Customs Service is authorized in the enforce-
2 ment of this Act, to search, detain (after
3 search), and seize goods or technology at those
4 ports of entry or exit from the United States
5 where officers of the Customs Service are au-
6 thorized by law to conduct such searches, deten-
7 tions, and seizures, and at those places outside
8 the United States where the Customs Service,
9 pursuant to agreements or other arrangements
10 with other countries, is authorized to perform
11 enforcement activities;

12 (B) the Secretary, and officers and em-
13 ployees of the Department of Commerce des-
14 ignated by the Secretary, may make investiga-
15 tions within the United States, and shall con-
16 duct, outside the United States, pre-license and
17 post-shipment verifications of items licensed for
18 export and investigations in the enforcement of
19 section 7 of this Act. The Secretary, and offi-
20 cers and employees of the Department of Com-
21 merce designated by the Secretary, are author-
22 ized to search, detain (after search), and seize
23 items at those places within the United States
24 other than those ports and borders specified in
25 paragraph (2)(A) above. The search, detention

1 (after search), or seizure of items at those ports
2 and borders specified in paragraph (2)(A) may
3 only be conducted by officers and employees of
4 the Department of Commerce with the concur-
5 rence of the Commissioner of Customs or a per-
6 son designated by the Commissioner; and

7 (C) the Secretary and the Commissioner of
8 Customs may enter into agreements and ar-
9 rangements for the enforcement of this Act, in-
10 cluding foreign investigations and information
11 exchange.

12 (3) Any officer or employee designated in ac-
13 cordance with paragraph (2) may do the following in
14 carrying out the enforcement authority under this
15 Act, except that the authorities enumerated in sub-
16 paragraphs (F) and (G) below may be carried out
17 only by officers and employees of the United States
18 Customs Service designated by the Commissioner:

19 (A) Make investigations of, obtain informa-
20 tion from, make inspection of any books,
21 records, or reports, as well as any writings re-
22 quired to be kept by the Secretary, premises, or
23 property of, and take the sworn testimony of,
24 any person.

1 (B) Administer oaths or affirmations, and
2 by subpoena require any person to appear and
3 testify or to appear and produce books, records,
4 and other writings, or both. In the case of con-
5 tumacy by, or refusal to obey a subpoena issued
6 to, any such person, a district court of the
7 United States, after notice to any such person
8 and hearing, shall have jurisdiction to issue an
9 order requiring such person to appear and give
10 testimony or to appear and produce books,
11 records, and other writings, or both, and any
12 failure to obey such order of the court may be
13 punished by such court as a contempt thereof.

14 (C) Execute any warrant or other process
15 issued by a court or officer of competent juris-
16 diction with respect to the enforcement of the
17 provisions of this Act.

18 (D) Make arrests without warrant for any
19 violation of this Act committed in his or her
20 presence or view, or if the officer or employee
21 has probable cause to believe that the person to
22 be arrested has committed, is committing, or is
23 about to commit such a violation.

24 (E) Carry firearms.

1 (F) Stop, search, and examine a vehicle,
2 vessel, aircraft, or person on which or whom the
3 officer or employee has reasonable cause to sus-
4 pect there is any item that has been, is being,
5 or is about to be exported from or transited
6 through the United States in violation of this
7 Act.

8 (G) Detain and search any package or con-
9 tainer in which the officer or employee has rea-
10 sonable cause to suspect there is any item that
11 has been, is being, or is about to be exported
12 from or transited through the United States in
13 violation of this Act.

14 (H) Detain (after search) or seize any
15 item, for purposes of securing for trial or for-
16 feiture to the United States, on or about such
17 vehicle, vessel, aircraft, or person, or in such
18 package or container, if the officer or employee
19 has probable cause to believe the item has been,
20 is being, or is about to be exported from or
21 transited through the United States in violation
22 of this Act.

23 (I) The authorities conferred by this sec-
24 tion are in addition to any authorities conferred
25 under other laws.

1 (b) FORFEITURE.—All goods or tangible items law-
2 fully seized under subsection (a) of this section by des-
3 ignated officers or employees shall be forfeited to the
4 United States. Those provisions of law relating to—

5 (1) the seizure, summary and judicial forfeiture,
6 and condemnation of property for violations of the
7 customs laws;

8 (2) the disposition of such property or the pro-
9 ceeds from the sale thereof;

10 (3) the remission or mitigation of such forfeit-
11 ures; and

12 (4) the compromise of claims;

13 shall apply to seizures and forfeitures incurred, or alleged
14 to have been incurred, under the provisions of this sub-
15 section, insofar as applicable and not inconsistent with
16 this Act, except that such duties as are imposed upon the
17 customs officer or any other person with respect to the
18 seizure and forfeiture of property under the customs laws
19 may be performed with respect to seizures and forfeitures
20 of property under this subparagraph by the Secretary or
21 such officers or employees of the Department of Com-
22 merce as may be authorized or designated for that purpose
23 by the Secretary, or, upon the request of the Secretary,
24 by any other agency that has authority to manage and
25 dispose of seized property.

1 (c) UNDERCOVER INVESTIGATIVE OPERATIONS.—

2 (1) With respect to any undercover investigative
3 operation conducted by the Office of Export En-
4 forcement of the Department of Commerce (herein-
5 after in this subsection referred to as “OEE”) nec-
6 essary for the detection and prosecution of violations
7 of this Act—

8 (A) funds made available for export en-
9 forcement under this Act may be used to pur-
10 chase property, buildings, and other facilities,
11 and to lease space within the United States,
12 without regard to sections 1341 and 3324 of
13 title 31, United States Code, the third undesig-
14 nated paragraph under the heading “MIS-
15 CELLANEOUS” of the Act of March 3, 1877,
16 title 40, United States Code, section 34, sec-
17 tions 3732(a) and 3741 of the Revised Statutes
18 of the United States, title 41, United States
19 Code, sections 11(a) and 22, and subsections
20 (a) and (c) of section 304, and section 305, of
21 the Federal Property and Administrative Serv-
22 ices act of 1949 and title 41, United States
23 Code, sections 254 (a) and (c) and 255;

24 (B) funds made available for export en-
25 forcement under this Act may be used to estab-

1 lish or to acquire proprietary corporations or
2 business entities as part of an OEE undercover
3 operation, and to operate such corporations or
4 business entities on a commercial basis, without
5 regard to section 9102 of title 31, United
6 States Code;

7 (C) funds made available for export en-
8 forcement under this Act and the proceeds from
9 OEE undercover operations may be deposited
10 in banks or other financial institutions without
11 regard to the provisions of section 648 of title
12 18, United States Code, and section 3302 of
13 title 31, United States Code; and

14 (D) the proceeds from OEE undercover
15 operations may be used to offset necessary and
16 reasonable expenses incurred in such operations
17 without regard to the provisions of section 3302
18 of title 31, United States Code; if the Director
19 of OEE (or an officer or employee designated
20 by the Director) certifies, in writing, that any
21 action authorized by clause (A), (B), (C), or
22 (D) is necessary for the conduct of the under-
23 cover operation.

24 (2) If a corporation or business entity estab-
25 lished or acquired as part of an OEE undercover op-

1 eration with a net value of more than \$50,000 is to
2 be liquidated, sold, or otherwise disposed of, OEE
3 shall report the circumstances to the Secretary and
4 the Comptroller General, as much in advance of
5 such disposition as the Director of OEE or his or
6 her designee determines is practicable. The proceeds
7 of the liquidation, sale, or other disposition, after ob-
8 ligations incurred by the corporation or business en-
9 terprise are met, shall be deposited in the Treasury
10 of the United States as miscellaneous receipts.

11 (3) As soon as the proceeds from an undercover
12 investigative operation with respect to which an ac-
13 tion is authorized and carried out under this para-
14 graph are no longer necessary for the conduct of
15 such operation, such proceeds or the balance of such
16 proceeds remaining at the time shall be deposited
17 into the Treasury of the United States as mis-
18 cellaneous receipts.

19 (4) AUDIT AND REPORT.—

20 (A) The Director of OEE shall conduct a
21 detailed financial audit of each undercover in-
22 vestigative operation which is closed and shall
23 submit the results of the audit in writing to the
24 Secretary. Not later than 180 days after an
25 OEE undercover operation is closed, the Sec-

1 retary shall submit to the Congress a report on
2 the results of the audit.

3 (B) The Secretary shall submit a report
4 annually to the Congress, which report may be
5 included in the annual report under section 13,
6 specifying the following information:

7 (i) The number of OEE undercover
8 investigative operations pending as of the
9 end of the period for which such report is
10 submitted.

11 (ii) The number of OEE undercover
12 investigative operations commenced in the
13 1-year period preceding the period for
14 which such report is submitted.

15 (iii) The number of OEE undercover
16 investigative operations closed in the 1-
17 year period preceding the period for which
18 such report is submitted and, with respect
19 to each such closed undercover operation,
20 the results obtained and any civil claims
21 made with respect thereto.

22 (5) For purposes of subparagraph (4)—

23 (A) the term “closed” refers to the earliest
24 point in time at which all criminal proceedings
25 (other than appeals) are concluded, or covert

1 activities are concluded, whichever occurs later;
2 and

3 (B) the terms “undercover investigative
4 operation” and “undercover operation” mean
5 any undercover investigative operation con-
6 ducted by OEE—

7 (i) in which the gross receipts (exclud-
8 ing interest earned) exceed \$25,000, or ex-
9 penditures (other than expenditures for
10 salaries of employees) exceed \$75,000; and

11 (ii) which is exempt from section 3302
12 or 9102 of title 31, United States Code,
13 except that clauses (i) and (ii) shall not
14 apply with respect to the report to the
15 Congress required by paragraph (B) of
16 subparagraph (4); and

17 (iii) the term “employees” means em-
18 ployees, as defined in section 2105 of title
19 5, United States Code, of the Department
20 of Commerce.

21 (d) REFERENCE TO ENFORCEMENT.—For purposes
22 of this section, a reference to the enforcement of this Act
23 or to a violation of this Act includes a reference to the
24 enforcement or a violation of any regulation, license, or
25 order issued under this Act.

1 **SEC. 11. AUTHORITY AND PROCEDURES.**

2 (a) UNDER SECRETARY OF COMMERCE.—The Presi-
3 dent shall appoint, by and with the advice and consent
4 of the Senate, an Under Secretary of Commerce for Ex-
5 port Administration who shall carry out all functions of
6 the Secretary under this Act, under other statutes that
7 relate to national security, and under such other statutes
8 as the Secretary may delegate. The President shall ap-
9 point, by and with the advice and consent of the Senate,
10 two Assistant Secretaries of Commerce to assist the Under
11 Secretary in carrying out such functions.

12 (b) REGULATIONS.—The Secretary may issue such
13 regulations as are necessary to carry out the provisions
14 of this Act, and amend or revise them as necessary. Such
15 regulations may apply to financing, transporting, or other
16 servicing of exports subject to this Act and the participa-
17 tion therein by any person. The Secretary shall consult
18 with the appropriate technical advisory committees au-
19 thorized under this Act in formulating or amending regu-
20 lations issued under this Act. Any regulations to carry out
21 the provisions of section 5 may be issued only after the
22 regulations are submitted for review to such departments
23 or agencies as the Secretary considers appropriate. The
24 requirement for prior agency review does not confer the
25 right of concurrence or approval by any official, depart-
26 ment, or agency to which such regulations are submitted.

1 (c) CONFIDENTIALITY OF INFORMATION.—

2 (1) EXEMPTIONS FROM DISCLOSURE.—

3 (A) Except as otherwise provided by the
4 third sentence of section 7(b)(2) of this Act, in-
5 formation obtained under the Export Adminis-
6 tration Act of 1979 and its predecessor statutes
7 on or before June 30, 1980, which is deemed
8 confidential, including Shipper's Export Dec-
9 larations, or with reference to which a request
10 for confidential treatment is made by the per-
11 son furnishing such information, shall not be
12 subject to disclosure under section 552 of title
13 5, United States Code, and such information
14 shall not be published or disclosed unless the
15 Secretary determines that the withholding
16 thereof is contrary to the national interest.

17 (B) Except as otherwise provided by the
18 third sentence of section 7(b)(2) of this Act, in-
19 formation obtained under this Act, under the
20 Export Administration Act of 1979 after June
21 30, 1980, or under the Export Administration
22 Regulations as maintained and amended under
23 the authority of the International Emergency
24 Economic Powers Act (50 U.S.C. 1706) may be
25 withheld only to the extent permitted by stat-

1 ute, except that information submitted, ob-
2 tained or considered in connection with an ap-
3 plication for an export license or other export
4 authorization, including the export license or
5 other export authorization itself, classification
6 requests, information obtained during the
7 course of a foreign availability assessment, in-
8 formation or evidence obtained in the course of
9 any investigation, and information obtained or
10 furnished in connection with multilateral agree-
11 ments, treaties, or obligations under this Act,
12 under the Export Administration Act of 1979
13 after June 30, 1980, or under the Export Ad-
14 ministration Regulations as maintained and
15 amended under the authority of the Inter-
16 national Emergency Economic Powers Act (50
17 U.S.C. 1706) shall not be subject to disclosure
18 under section 552 of title 5, United States
19 Code, and such information shall not be pub-
20 lished or disclosed unless the Secretary deter-
21 mines that the withholding thereof is contrary
22 to the national interest.

23 (2) INFORMATION TO CONGRESS AND GAO.—

24 (A) IN GENERAL.—Nothing in this Act
25 shall be construed as authorizing the withhold-

1 ing of information from the Congress or from
2 the General Accounting Office.

3 (B) AVAILABILITY TO THE CONGRESS.—

4 (i) IN GENERAL.—All information ob-
5 tained at any time under this Act or pre-
6 vious Acts regarding the control of exports,
7 including any report or license application
8 required under this Act, shall upon request
9 be made available to the Committee on
10 Foreign Affairs and the Subcommittee on
11 International Economic Policy and Trade
12 of the House of Representatives and the
13 Committee on Banking, Housing, and
14 Urban Affairs and the Subcommittee on
15 International Finance and Monetary Policy
16 of the Senate. Each of the above des-
17 ignated committees and subcommittees
18 may provide other members of Congress
19 information obtained under this authority
20 provided that such information may not be
21 further disclosed except upon a finding
22 made under the following subparagraph.

23 (ii) PROHIBITION ON FURTHER DIS-
24 CLOSURE.—No such committee or sub-
25 committee, or member thereof, and no

1 other committee, subcommittee, or member
2 of Congress shall disclose any information
3 obtained under this Act or previous Acts
4 regarding the control of exports which is
5 submitted pursuant to this subsection un-
6 less one of the above-described full commit-
7 tees determines that the withholding of
8 that information is contrary to the national
9 interest.

10 (C) AVAILABILITY TO THE GAO.—

11 (i) IN GENERAL.—Notwithstanding
12 paragraph (1), information referred to in
13 subparagraph (B) shall, consistent with
14 the protection of intelligence, counterintel-
15 ligence, and law enforcement sources,
16 methods, and activities, as determined by
17 the agency that originally obtained the in-
18 formation, and consistent with the provi-
19 sions of section 313 of the Budget and Ac-
20 counting Act of 1921, be made available
21 only by the agency, upon request, to the
22 Comptroller General of the United States
23 or to any officer or employee of the Gen-
24 eral Accounting Office authorized by the

1 Comptroller General to have access to such
2 information.

3 (ii) PROHIBITION ON FURTHER DIS-
4 CLOSURES.—No officer or employee of the
5 General Accounting Office shall disclose,
6 except to the Congress in accordance with
7 this paragraph, any such information
8 which is submitted on a confidential basis
9 and from which any individual can be iden-
10 tified.

11 (3) COMMERCE/CUSTOMS INFORMATION EX-
12 CHANGE.—Notwithstanding the provisions of section
13 11(c)(1), the Secretary and the Commissioner of
14 Customs shall exchange any licensing and enforce-
15 ment information with each other which is necessary
16 to facilitate enforcement efforts and effective license
17 decisions.

18 (4) PENALTIES FOR DISCLOSURE OF CON-
19 FIDENTIAL INFORMATION.—Any officer or employee
20 of the United States, or any department or agency
21 thereof, who publishes, divulges, discloses, or makes
22 known in any manner or to any extent not author-
23 ized by law any information coming to him in the
24 course of his or her employment or official duties or
25 by reason of any examination or investigation made

1 by, report or record made to or filed with, such de-
2 partment or agency, or officer or employee thereof,
3 which information is exempt from disclosure under
4 this subsection, shall be fined not more than \$1,000,
5 or imprisoned not more than 1 year, or both, and
6 may be removed from office or employment and shall
7 be subject to an administrative fine of not more than
8 \$1,000 to be enforced under the authorities and pro-
9 cedures of section 10 of this Act.

10 (d) PUBLIC PARTICIPATION.—It is the intent of the
11 Congress that, to the extent practicable, all regulations
12 imposing controls on exports under this Act be issued in
13 proposed form with meaningful opportunity for public
14 comment before taking effect. In cases where a regulation
15 imposing controls under this Act is issued with immediate
16 effect, it is the intent of the Congress that meaningful op-
17 portunity for public comment also be provided and that
18 the regulation be reissued in final form after public com-
19 ments have been fully considered.

20 (e) CONTROL LIST DEVELOPMENT AND REVIEW.—

21 (1) IN GENERAL.—The Secretary shall establish
22 and maintain a Control List comprising all items re-
23 quiring a validated license for export to designated
24 countries under this Act. The Control List and other
25 implementing regulations shall clearly identify the

1 specific items controlled to each country. The Sec-
2 retary shall establish validated license requirements
3 on the Control List.

4 (2) DEVELOPMENT AND REVIEW OF THE CON-
5 TROL LIST.—The Secretary shall consult with appro-
6 priate departments and agencies regarding the addi-
7 tion, deletion, or maintenance of a license require-
8 ment for a given item. The Secretary of State, in
9 consultation with appropriate departments and agen-
10 cies, shall be responsible for conducting negotiations
11 and developing negotiating positions with other
12 countries regarding multilateral arrangements for
13 restricting the export of items to carry out the poli-
14 cies of this Act. All appropriate departments and
15 agencies shall consult to develop initial technical pa-
16 rameters and item definitions in connection with the
17 development of proposals within the United States
18 Government to be made to multilateral regimes in
19 consultation with the Technical Advisory Committees
20 as provided in paragraph (3) below.

21 For items controlled by a multilateral regime,
22 the Secretary shall conduct periodic reviews sched-
23 uled sufficiently in advance of regime deliberations
24 to permit the United States to present appropriate
25 proposals after consultation with United States in-

1 dustry and the technical advisory committees. The
2 Secretary shall seek the advice of United States in-
3 dustry and appropriate technical advisory commit-
4 tees as to the control of items subject to this Act.
5 This review shall serve as a basis for United States
6 proposals for revision of items subject to multilateral
7 regimes. The Secretary of State shall seek to ensure
8 that each multilateral regime in which the United
9 States is a member shall review each item on its list
10 of controlled items at least once every 2 years. In
11 any case when such a multilateral regime fails to re-
12 view an entry on its list of controlled items within
13 2 years of the prior review, the Secretary of State
14 shall propose a review by the relevant multilateral
15 regime of such an entry. Regardless of the frequency
16 of list reviews by a given regime, the Secretary shall
17 review each item controlled in cooperation with a
18 multilateral regime at least once every 2 years.

19 (3) TECHNICAL ADVISORY COMMITTEES AND
20 THE PUBLIC.—The appropriate technical advisory
21 committee appointed under section 4(g) shall be con-
22 sulted by the Secretary with respect to changes in
23 the Control List established pursuant to this sub-
24 section, and such technical advisory committee may
25 submit recommendations to the Secretary with re-

1 spect to such changes. The Secretary shall consider
2 the recommendations of the technical advisory com-
3 mittee and shall inform the committee of the disposi-
4 tion of its recommendations. The Secretary shall
5 also seek comments and recommendations from the
6 public in connection with changes in the Control List
7 established pursuant to this subsection. To the maxi-
8 mum extent practicable and consistent with the con-
9 duct of international negotiations, in every possible
10 instance, such comments and recommendations shall
11 be taken into consideration in the development of
12 United States Government proposals for all list revi-
13 sions and positions to be taken in multilateral re-
14 gimes.

15 (f) AUTHORITY FOR SEMINAR AND PUBLICATIONS
16 FUND.—The Secretary is authorized to cooperate with
17 public agencies, other governments, international organi-
18 zations, private individuals, private associations, and other
19 groups in connection with seminars, publications, and re-
20 lated activities to carry out export activities, including
21 educating the public or government officials in the applica-
22 tion of this Act and the regulations issued under this Act.
23 The Secretary is further authorized to accept contribu-
24 tions of funds, property, or services in connection with
25 such activities to recover the cost of such programs and

1 activities over time. Contributions shall include payments
2 for materials or services provided as part of these activi-
3 ties. The contributions collected may be retained for use
4 in covering the costs of these activities, and for supporting
5 all outreach functions of the Department in connection
6 with this Act and other export control programs of the
7 United States and other governments.

8 (g) SUPPORT OF OTHER COUNTRIES' EXPORT CON-
9 TROL PROGRAM.—The Secretary may participate in the
10 education and training of officials of other countries on
11 the principles and procedures for the implementation of
12 effective export controls.

13 (h) APPLICABILITY OF ADMINISTRATIVE PROCE-
14 DURES ACT.—

15 (1) EXEMPTION.—Except as provided in sub-
16 section (d) of section 9, the functions exercised
17 under this Act are excluded from the operation of
18 sections 551, 553 through 559, and 701 through
19 706 of title 5, United States Code.

20 (2) JUDICIAL REVIEW.—Except as provided by
21 subsections (d), (g), and (j) of section 9, a final
22 agency action under this Act may be reviewed by ap-
23 peal to the United States Court of Appeals for the
24 District of Columbia Circuit, to the extent provided

1 in this paragraph. The court's review in any such
2 appeal shall be limited to determining whether—

3 (A) a regulation—

4 (i) fails to take an action compelled by
5 this Act;

6 (ii) takes an action prohibited by this
7 Act; or

8 (iii) otherwise violates this Act;

9 (B) an agency action violates this Act;

10 (C) an agency action violates an agency
11 regulation establishing time requirements or
12 other procedural requirements of a non-discre-
13 tionary nature;

14 (D) the issuance of regulations compelled
15 by this Act complies with time restrictions im-
16 posed by this Act;

17 (E) license decisions are made and appeals
18 thereof are concluded in compliance with time
19 restrictions imposed by this Act;

20 (F) classifications and advisory opinions
21 are issued in compliance with time restrictions
22 imposed by this Act;

23 (G) unfair impact determinations are in
24 compliance with time restrictions imposed by
25 this Act; or

1 (H) the United States has complied with
2 the requirements of section 5(k) after an unfair
3 impact determination has been rendered.

4 (i) INCORPORATED COMMODITIES, TECHNOLOGY,
5 AND SOFTWARE.—

6 (1) COMMODITIES CONTAINING CONTROLLED
7 PARTS AND COMPONENTS.—Export licenses may not
8 be required under this Act or any other provision of
9 law for a commodity solely because the commodity
10 contains parts or components subject to export con-
11 trol under this Act if such parts or components—

12 (A) are essential to the functioning of the
13 good;

14 (B) are customarily included in sales of the
15 item in countries other than target countries;
16 and

17 (C) comprise 25 percent or less of the total
18 value of the good, unless the good itself, if ex-
19 ported, would by virtue of the functional char-
20 acteristics of the good as a whole make a sig-
21 nificant contribution to the military or pro-
22 liferation potential of a target country or end
23 user which would prove detrimental to the na-
24 tional security of the United States.

1 (2) REEXPORTS OF FOREIGN-MADE ITEMS IN-
2 CORPORATING UNITED STATES ITEMS.—Except for
3 countries embargoed under this Act, the Inter-
4 national Emergency Economic Powers Act or the
5 Trading with the Enemy Act, and except for coun-
6 tries named as terrorist-supporting countries under
7 section 5(j)(4), no authority or permission may be
8 required under this Act to—

9 (A) reexport a foreign-made commodity in-
10 corporating United States origin commodities
11 valued at 25 percent or less of the total value
12 of the foreign-made commodity;

13 (B) reexport foreign-made software incor-
14 porating United States origin software valued
15 at 25 percent or less of the total value of the
16 foreign-made software; or

17 (C) reexport foreign technology commin-
18 gled with or drawn from United States origin
19 technology valued at 25 percent or less of the
20 total value of the foreign technology.

21 For countries embargoed under this Act, the Inter-
22 national Emergency Economic Powers Act or the
23 Trading with the Enemy Act, and except for coun-
24 tries named as terrorist-supporting countries under

1 section 5(j)(4), no authority or permission may be
2 required under this Act to—

3 (D) reexport a foreign-made commodity in-
4 corporating United States origin commodities
5 valued at 10 percent or less of the total value
6 of the foreign-made commodity;

7 (E) reexport foreign-made software incor-
8 porating United States origin software valued
9 at 10 percent or less of the total value of the
10 foreign-made software; or

11 (F) reexport foreign technology commin-
12 gled with or drawn from United States origin
13 technology valued at 10 percent or less of the
14 total value of the foreign technology.

15 For purposes of this subsection, technology and
16 source code used to design or produce foreign-made
17 commodities or software are not incorporated into
18 such foreign-made commodities or software. Not-
19 withstanding the above provisions, the Secretary
20 may require firms to report to the Department of
21 Commerce their proposed calculations and underly-
22 ing data sufficient for the Department of Commerce
23 to evaluate the adequacy of those calculations and
24 data related to commodities, technology, and soft-

1 ware before a reexporter may rely upon this exclu-
2 sion from controls.

3 (j) EXCEPTIONS FOR MEDICAL AND HUMANITARIAN
4 PURPOSES.—This Act does not authorize controls on—

5 (1) medical instruments and equipment subject
6 to the provisions of subsection (j)(1) of this section;

7 (2) medicine or medical supplies; or

8 (3) donations of items that are intended to
9 meet basic human needs including food, educational
10 materials, seeds, hand tools, water resources equip-
11 ment, clothing and shelter materials, and basic
12 household supplies.

13 (k) SANCTITY OF EXISTING CONTRACTS AND LI-
14 CENSES.—

15 (1) IN GENERAL.—Under a unilateral control
16 imposed under section 5 of this Act, the President
17 may not prohibit the export or reexport of items—

18 (A) in performance of a contract, agree-
19 ment, or other contractual commitment entered
20 into before the effective date of any export con-
21 trols mandated by this law, or the date on
22 which the President reports to the Congress the
23 President's intention to impose controls on the
24 export or reexport of such items; or

1 (B) under a validated license issued under
2 this Act before the effective date of any export
3 controls mandated by this law, or the date on
4 which the President reports to the Congress the
5 President's intention to impose controls on the
6 export or reexport of such items.

7 (2) EXCEPTION.—The prohibition in paragraph
8 (1) shall not apply if the President determines and
9 certifies to the Congress that—

10 (A) a breach of the peace poses a serious
11 and direct threat to the strategic interest of the
12 United States;

13 (B) the prohibition or curtailment of each
14 such contract, agreement, commitment, license,
15 or authorization to be controlled will be directly
16 instrumental in remedying the situation posing
17 the direct threat; and

18 (C) the emergency controls will continue
19 only so long as the direct threat persists.

20 (3) The determination authority provided to the
21 President in this subparagraph (2) may not be dele-
22 gated.

23 (I) FACT-FINDING AUTHORITY.—

24 (1) To the extent necessary or appropriate to
25 the administration of this Act or any multilateral re-

1 game in which the United States participates pursu-
2 ant to this Act, the Secretary (and officers or em-
3 ployees of the Department of Commerce designated
4 by the Secretary), the Commissioner of Customs, or
5 the head of any other department or agency des-
6 ignated by the Secretary may exercise the authori-
7 ties described in paragraph (2).

8 (2) Any officer or employee designated by the
9 Secretary may do the following in carrying out the
10 authority of this Act:

11 (A) Make investigations of, obtain informa-
12 tion from, require reports or the keeping of
13 such records by, make inspection of the books,
14 records, and other writings, premises, or prop-
15 erty of, and take the sworn testimony of, any
16 person.

17 (B) Administer oaths or affirmations, and
18 by subpoena require any person to appear and
19 testify or to appear and produce books, records,
20 and other writings, or both. In the case of con-
21 tumacy by, or refusal to obey a subpoena issued
22 to, any such person, a district court of the
23 United States, after notice to any such person
24 and hearing, shall have jurisdiction to issue an
25 order requiring such person to appear and give

1 testimony or to appear and produce books,
2 records, and other writings, or both, and any
3 failure to obey such order of the court may be
4 punished by such court as a contempt thereof.

5 (m) MILITARY CRITICAL TECHNOLOGIES LIST DE-
6 VELOPMENT, REVIEW AND USE.—

7 (1) In developing the Military Critical Tech-
8 nologies List (MCTL), established pursuant to sub-
9 section 4(c) of this Act, primary emphasis shall be
10 given to—

11 (A) development and production tech-
12 nology;

13 (B) test, inspection, and production equip-
14 ment;

15 (C) advanced materials, chemicals, and bi-
16 ological agents;

17 (D) unique software; and

18 (E) systems, subsystems, assemblies and
19 components.

20 (2) The list referred to in paragraph (1) shall
21 be sufficiently specific to guide the determinations of
22 any official exercising export licensing responsibil-
23 ities under this Act. For purposes of completeness
24 and cross-reference, the MCTL shall include both
25 dual-use items controlled by this Act and other mili-

1 tarily critical items that may be controlled under
2 other authorities, including the Arms Export Control
3 Act (22 U.S.C. 2770 et seq.)

4 (3) Consistent with the policies of section 3 and
5 the criteria of section 5, the Secretary and the Sec-
6 retary of Defense shall propose integration of items
7 on the list of militarily critical technologies into the
8 Control List in accordance with the requirements of
9 paragraph (1) of this subsection. Any disagreement
10 between the Secretary and the Secretary of Defense
11 regarding the integration of an item on the list of
12 militarily critical technologies into the Control List
13 shall be resolved by the President.

14 (4) The Secretary of Defense shall establish a
15 procedure for reviewing the MCTL on an ongoing
16 basis for the purpose of removing from the MCTL
17 any items that are no longer militarily critical. The
18 Secretary of Defense may add to the MCTL any
19 item that the Secretary of Defense determines is
20 militarily critical, consistent with the provisions of
21 paragraph (1) of this subsection. If the Secretary
22 and the Secretary of Defense disagree as to whether
23 any change in the MCTL by the addition or removal
24 of an item should also be made in the Control List,
25 the President shall resolve the disagreement.

1 (5) The establishment of adequate export con-
2 trols for militarily critical technology, equipment,
3 and materials shall be accompanied by suitable re-
4 ductions in the controls on the products of that tech-
5 nology, equipment, and materials.

6 **SEC. 12A. SANCTIONS FOR PROLIFERATION ACTIVITY AND**
7 **THE USE OF CHEMICAL AND BIOLOGICAL**
8 **WEAPONS AND MISSILES.**

9 (a) DETERMINATIONS.—

10 (1) DETERMINATION OF ACTIVITY SUPPORTING
11 THE PROLIFERATION OF CHEMICAL AND BIOLOGICAL
12 WEAPONS AND MISSILES.—The President shall de-
13 termine whether any foreign person has, on or after
14 the date of the enactment of this section, knowingly
15 or with reason to know contributed materially to the
16 efforts of any government, group, entity, or project
17 to use, design, develop, produce, stockpile, or other-
18 wise acquire chemical or biological weapons or mis-
19 siles—

20 (A) through the export or transfer of—

21 (i) any item on the MTCR Annex
22 whether or not of United States-origin; or

23 (ii) any chemicals, biological agents,
24 or equipment which may contribute to a
25 chemical or biological weapons program

1 such as those listed by the Australia
2 Group, whether or not of United States-or-
3 igin;

4 (B) by participating in any financial trans-
5 action related to the activity described in para-
6 graphs (1)(A) or (1)(B); or

7 (C) by facilitating the activity described in
8 paragraphs (1)(A) or (1)(B);

9 (D) This subsection does not apply—

10 (i) under (a)(1)(A)(i) to an export or
11 transfer that is authorized by the govern-
12 ment of a country that is an adherent to
13 the MTCR or is to a country that is an ad-
14 herent to the MTCR; or

15 (ii) under (a)(1)(A)(ii) for an export
16 or transfer that is to a country that is both
17 authorized by a country that is an adher-
18 ent to the Australia Group or a signatory
19 to the Chemical Weapons Convention and
20 is to a country that is an adherent to the
21 Australia Group or a signatory to the
22 Chemical Weapons Convention.

23 (2) DETERMINATION OF USE OF CHEMICAL OR
24 BIOLOGICAL WEAPONS.—Whenever persuasive infor-
25 mation becomes available to the executive branch in-

1 dicating the substantial possibility that, on or after
2 the date of enactment of this Act, the government
3 of a foreign country has made substantial prepara-
4 tion to use chemical or biological weapons, the Presi-
5 dent shall, within 60 days after the receipt of such
6 information by the executive branch, determine
7 whether that government, on or after such date of
8 enactment, has used chemical or biological weapons
9 in violation of international law or has used lethal
10 chemical or biological weapons against its own na-
11 tionals.

12 (b) PERSONS AGAINST WHICH SANCTIONS ARE TO
13 BE IMPOSED.—In the event of an affirmative determina-
14 tion under subsection (a)(1)(A)(i) or (a)(1)(A)(ii), the
15 President shall impose sanctions described under sub-
16 section (c) on the foreign person that engaged in, facili-
17 tated, or solicited the conduct that is the subject of the
18 determination, on other persons as the President deter-
19 mines should be subject to sanctions because they are re-
20 lated to that person, and on any successor of a sanctioned
21 person.

22 (c) SANCTIONS.—

23 (1) MANDATORY SANCTIONS.—The following
24 sanctions shall be imposed for a minimum of 2 years

1 in the event the President makes a determination
2 under subsections (a)(1)(A)(i) or (a)(1)(A)(ii):

3 (A) If the determination is for activity re-
4 lated to missile proliferation, validated licenses
5 for items on the MTCR annex shall be denied
6 under this Act and the Arms Export Control
7 Act and imports of such items from such enti-
8 ties shall be prohibited.

9 (B) If the determination is for activity re-
10 lated to chemical or biological weapons pro-
11 liferation, validated licenses for items listed by
12 the Australia Group shall be denied under this
13 Act and the Arms Export Control Act and im-
14 ports of such items from such entities shall be
15 prohibited.

16 (C) The United States Government shall
17 not procure, or enter into any contract for the
18 procurement of, any services, commodities, soft-
19 ware, and technology, or other products from or
20 produced by any entity described in subsection
21 (a)(2).

22 (2) DISCRETIONARY SANCTIONS.—In addition
23 to the sanctions described in paragraph (1), the
24 President may also take any of the actions listed in
25 paragraphs (3) and (5), if the President determines

1 that such additional measures would further the ob-
2 jectives of this section. Such additional sanctions
3 shall be proportionate to the harm the sanctioned
4 behavior has caused or will cause the national secu-
5 rity or nonproliferation interests of the United
6 States.

7 (3) MANDATORY SANCTIONS FOR USE OF
8 CHEMICAL OR BIOLOGICAL WEAPONS.—The follow-
9 ing sanctions shall be imposed in the event the
10 President makes a determination under subsection
11 (a)(2):

12 (A) FOREIGN ASSISTANCE.—The United
13 States Government shall terminate assistance to
14 that country under the Foreign Assistance Act
15 of 1961, except for urgent humanitarian assist-
16 ance and food or other agricultural commodities
17 or products.

18 (B) ARMS SALES.—The United States
19 Government shall terminate—

20 (i) sales to that country under the
21 Arms Export Control Act of any defense
22 articles, defense services, or design and
23 construction services; and

1 (ii) licenses for the export to that
2 country of any item on the United States
3 Munitions List.

4 (C) ARMS SALES FINANCING.—The United
5 States Government shall terminate all foreign
6 military financing for that country under the
7 Arms Export Control Act.

8 (D) DENIAL OF UNITED STATES GOVERN-
9 MENT CREDIT OR OTHER FINANCIAL ASSIST-
10 ANCE.—The United States Government shall
11 deny to that country any credit, credit guaran-
12 tees, or other financial assistance by any de-
13 partment, agency, or instrumentality of the
14 United States Government, including the Ex-
15 port-Import Bank of the United States.

16 (E) EXPORTS OF NATIONAL SECURITY-
17 SENSITIVE ITEMS.—The authorities of this Act
18 shall be used to prohibit the export to that
19 country of any items controlled for non-pro-
20 liferation, regional stability, or national security
21 reasons.

22 (4) ADDITIONAL SANCTIONS IF CERTAIN CONDI-
23 TIONS NOT MET.—Unless, within 3 months after
24 making a determination pursuant to subsection
25 (a)(2) with respect to a foreign government, the

1 President determines and certifies, in writing, to the
2 Congress that—

3 (A) the government is no longer using
4 chemicals or biological weapons in violation of
5 international law or using lethal chemicals or
6 biological weapons against its own nationals;

7 (B) the government has provided reliable
8 assurances that it will not, in the future, en-
9 gage in any such activities; and

10 (C) the government is willing to allow on-
11 site inspections by United Nations observers or
12 other internationally-recognized, impartial ob-
13 servers, or other reliable means exist, to ensure
14 that government is not using chemical or bio-
15 logical weapons in violation of international law
16 and is not using lethal chemical or biological
17 weapons against its own nationals, then the
18 President, after consultation with the Congress,
19 shall impose on that country the sanctions set
20 forth in at least 3 of subparagraphs (A)
21 through (F) of paragraph (5).

22 (5) ADDITIONAL SANCTIONS FOR USE OF
23 CHEMICAL OR BIOLOGICAL WEAPONS.—The sanc-
24 tions referred to in paragraph (4) are the following:

1 (A) MULTILATERAL DEVELOPMENT BANK
2 ASSISTANCE.—The United States Government
3 shall oppose, in accordance with section 701 of
4 the International Financial Institutions Act (22
5 U.S.C. 262d), the extension of any loan or fi-
6 nancial or technical assistance to that country
7 by international financial institutions.

8 (B) BANK LOANS.—The United States
9 Government shall prohibit any United States
10 bank from making any loan or providing any
11 credit to the government of that country, except
12 for loans or credits for the purpose of purchas-
13 ing food or other agricultural commodities or
14 products.

15 (C) FURTHER EXPORT RESTRICTIONS.—
16 The authorities of this Act may be used to pro-
17 hibit exports to the country of all other items
18 (excluding food and other agricultural commod-
19 ities and products).

20 (D) IMPORT RESTRICTIONS.—Restriction
21 shall be imposed on the importation into the
22 United States of articles (which may include pe-
23 troleum or any petroleum product) that are the
24 growth, product, or manufacture of that coun-
25 try.

1 (E) DIPLOMATIC RELATIONS.—The Presi-
2 dent shall use constitutional authorities to
3 downgrade or suspend diplomatic relations be-
4 tween the United States and the government of
5 that country.

6 (F) PRESIDENTIAL ACTION REGARDING
7 AVIATION.—

8 (i)(I) The President is authorized to
9 notify the government of a country with re-
10 spect to which the President has made a
11 determination, pursuant to subsection
12 12(a), regarding intention to suspend the
13 authority of foreign air carriers owned or
14 controlled by the government of that coun-
15 try to engage in foreign air transportation
16 to or from the United States.

17 (II) Within 10 days after the date of
18 notification of a government under
19 subclause (I), the Secretary of Transpor-
20 tation shall take all steps necessary to sus-
21 pend at the earliest possible date the au-
22 thority of any foreign air carrier owned or
23 controlled, directly or indirectly, by that
24 government to engage in foreign air trans-
25 portation to or from the United States,

1 notwithstanding any agreement relating to
2 air services.

3 (ii)(I) The President may direct the
4 Secretary of State to terminate any air
5 service agreement between the United
6 States and a country with respect to which
7 the President has made a determination
8 pursuant to subsection (a), in accordance
9 with the provisions of that agreement.

10 (II) Upon termination of an agree-
11 ment under this clause, the Secretary of
12 Transportation shall take such steps as
13 may be necessary to revoke at the earliest
14 possible date the right of any foreign air
15 carrier owned, or controlled, directly or in-
16 directly, by the government of that country
17 to engage in foreign air transportation to
18 or from the United States.

19 (iii) The Secretary of Transportation
20 may provide for such exceptions from
21 clauses (i) and (ii) as the Secretary consid-
22 ers necessary to provide for emergencies in
23 which the safety of an aircraft or its crew
24 or passengers is threatened.

1 (iv) For purposes of this subpara-
2 graph, the terms “air transportation”, “air
3 carrier”, “foreign air carrier”, and “for-
4 eign air transportation” have the meanings
5 such terms have under section 101 of the
6 Federal Aviation of 1958 (49 U.S.C. App.
7 1301).

8 (d) DEFERRAL AND LIMITATION.—

9 (1) The President may delay the making of a
10 determination under subsection (a) or the imposition
11 of sanctions in order to protect—

12 (A) ongoing criminal investigations; or

13 (B) sensitive intelligence sources and meth-
14 ods which are being used to acquire further in-
15 formation on the proliferation of weapons of
16 mass destruction, their delivery systems, or ad-
17 vanced conventional weapons.

18 The President shall exercise this authority only when
19 the President determines that nonproliferation objec-
20 tives do not outweigh the need to delay the imposi-
21 tion of sanctions to avoid compromising the criminal
22 investigation or intelligence sources and methods in-
23 volved. The President shall proceed when the basis
24 for the delay no longer exists.

1 (2) The President may delay the imposition of
2 sanctions for up to 180 days if the United States is
3 engaged in diplomatic efforts and consultations with
4 the objective of—

5 (A) curtailing the policies and conduct of
6 the government or person in the country of
7 weapons activity determined to have engaged in
8 the sanctioned conduct; or

9 (B) obtaining from the government with
10 effective jurisdiction over the sanctioned person
11 appropriate sanctions against such person or
12 the initiation of legal process to impose such
13 sanctions.

14 If such diplomatic efforts and consultations succeed
15 (i) in curtailing the conduct of the government or
16 person engaged in the sanctioned conduct, or (ii) in
17 obtaining enforcement action in accordance with
18 subparagraph (B), the President shall not be re-
19 quired to apply or maintain sanctions under this sec-
20 tion.

21 (3) The President should seek multilateral sup-
22 port for sanctions against activity covered by this
23 section. If multilateral sanctions are achieved that
24 the President determines will be more effective than
25 unilateral sanctions in furthering the national secu-

1 rity or nonproliferation objectives of the United
2 States, the President shall not be required to exer-
3 cise the authority in this section in a manner incon-
4 sistent with such multilateral sanctions.

5 (e) EXCEPTIONS.—The President shall not be re-
6 quired to apply or maintain sanctions under this section—

7 (1) in the case of procurement of defense arti-
8 cles or defense services—

9 (A) under existing contracts or sub-
10 contracts, including the exercise of options for
11 production quantities to satisfy United States
12 operational military requirements;

13 (B) if the President determines that the
14 person to which the sanctions would otherwise
15 be applied is a sole source supplier of the de-
16 fense articles or services, that the defense arti-
17 cles or services are essential, and that alter-
18 native sources are not readily or reasonably
19 available; or

20 (C) if the President determines that such
21 articles or services are essential to the national
22 security under defense coproduction agree-
23 ments;

24 (2) to the import of—

1 (A) products or services provided under
2 contracts entered into before the data on which
3 the President publishes notice of intention to
4 impose sanctions; or

5 (B)(i) spare parts;

6 (ii) component parts, but not finished
7 products, essential to United States products or
8 production;

9 (iii) information and technology essential
10 to United States products or production; or

11 (iv) routine servicing and maintenance of
12 products, to the extent that alternative sources
13 are not readily or reasonably available;

14 (3) to medical or other humanitarian items; or

15 (4) to any transaction subject to the reporting
16 requirements of title V of the National Security Act
17 of 1947;

18 (5) when the President determines, categori-
19 cally or on a case-by-case basis, that the application
20 of sanctions to bar performance of a contract or
21 agreement entered into before the date of the im-
22 position of sanctions is not necessary to achieve the
23 national security or nonproliferation objectives of the
24 United States and would be contrary to the national
25 interest.

1 (f) TERMINATION OF SANCTIONS FOR USING CHEMI-
2 CAL OR BIOLOGICAL WEAPONS.—During the minimum 2
3 years period of the mandatory sanctions imposed pursuant
4 to a determination under subsection (a)(2), such sanctions
5 may be removed if the President determines and so cer-
6 tifies to the Congress that—

7 (1) the government of that country has pro-
8 vided reliable assurances that it will not use chemi-
9 cal or biological weapons in violation of international
10 law and will not use lethal chemical or biological
11 weapons against its own nationals;

12 (2) that government is not making preparations
13 to use chemical or biological weapons in violation of
14 international law or to use lethal chemical or biologi-
15 cal weapons against its own nationals;

16 (3) that government is willing to allow on-site
17 inspections by United Nations observers or other
18 internationally-recognized, impartial observers to
19 verify that it is not making preparations to use
20 chemical or biological weapons in violation of inter-
21 national law or to use lethal chemical or biological
22 weapons against its own nationals, or other reliable
23 means exist to verify that it is not making such
24 preparations; and

1 (4) that government is making restitution to
2 those affected by any use of chemical or biological
3 weapons in violation of international law or by any
4 use of lethal chemical or biological weapons against
5 its own nationals.

6 (g) WAIVER.—

7 (1) CRITERION FOR WAIVER.—The President
8 may waive or partially waive the application of any
9 sanction imposed on any entity pursuant to this sec-
10 tion, if the President determines and certifies to
11 Congress that such waiver is important to the na-
12 tional interests of the United States.

13 (2) NOTIFICATION OF AND REPORT TO CON-
14 GRESS.—If the President decides to exercise the
15 waiver authority provided in paragraph (1), the
16 President shall so notify the Congress not less than
17 20 days before the waiver takes effect. Such notifica-
18 tion shall include a report stating the reasons for ex-
19 ercise of the waiver authority.

20 (h) REGULATORY IMPLEMENTATION OF SANC-
21 TIONS.—For items subject to the jurisdiction of the Sec-
22 retary under this Act, sanctions shall be implemented in
23 regulations issued by the Secretary and shall specify the
24 scope of products and entities. For items subject to the
25 jurisdiction of the Secretary of State under the Arms Ex-

1 port Control Act, sanctions shall be implemented in regu-
 2 lations issued by the Secretary of State and shall specify
 3 the scope of products and entities.

4 **SEC. 12B. SANCTIONS FOR PROLIFERATION ACTIVITY AND**
 5 **THE USE OF CHEMICAL AND BIOLOGICAL**
 6 **WEAPONS.**

7 Section 72 of the Arms Export Control Act is amend-
 8 ed to read as follows:

9 **“SEC. 72. SANCTIONS AGAINST CERTAIN FOREIGN PER-**
 10 **SONS AND COUNTRIES.**

11 “(a) DETERMINATIONS.—

12 “(1) DETERMINATION OF ACTIVITY SUPPORT-
 13 ING THE PROLIFERATION OF CHEMICAL AND BIO-
 14 LOGICAL WEAPONS AND MISSILES.—The President
 15 shall determine whether any foreign person has, on
 16 or after the date of the enactment of this section,
 17 knowingly or with reason to know contributed mate-
 18 rially to the efforts of any government, group, entity,
 19 or project to use, design, develop, produce, stockpile,
 20 or otherwise acquire chemical or biological weapons
 21 or missiles—

22 “(A) through the export or transfer of—

23 “(i) any item on the MTCR Annex
 24 whether or not of United States-origin;
 25 and

1 “(ii) any chemicals, biological agents,
2 or equipment which may contribute to a
3 chemical or biological weapons program
4 such as those listed by the Australia
5 Group, whether or not of United States-or-
6 igin;

7 “(B) by participating in any financial
8 transaction related to the activity described in
9 paragraphs (1)(A) or (1)(B); or

10 “(C) by facilitating or soliciting the activ-
11 ity described in paragraphs (1)(A) or (1)(B);

12 “(D) This subsection does not apply—

13 “(i) under (a)(1)(A)(i) to an export or
14 transfer that is authorized by the govern-
15 ment of a country that is an adherent to
16 the MTCR or is to a country that is an ad-
17 herent to the MTCR; or

18 “(ii) under (a)(1)(A)(ii) for an export
19 or transfer that is to a country that is both
20 authorized by a country that is an adher-
21 ent to the Australia Group or a signatory
22 to the Chemical Weapons Convention and
23 is to a country that is an adherent to the
24 Australia Group or a signatory to the
25 Chemical Weapons Convention.

1 “(2) DETERMINATION OF USE OF CHEMICAL OR
2 BIOLOGICAL WEAPONS.—Whenever persuasive infor-
3 mation becomes available to the executive branch in-
4 dicating the substantial possibility that, on or after
5 the date of enactment of this Act, the government
6 of a foreign country has made substantial prepara-
7 tion to use chemical or biological weapons, the Presi-
8 dent shall, within 60 days after the receipt of such
9 information by the executive branch, determine
10 whether that government, on or after such date of
11 enactment, has used chemical or biological weapons
12 in violation of international law or has used lethal
13 chemical or biological weapons against its own na-
14 tionals.

15 “(b) PERSONS AGAINST WHICH SANCTIONS ARE TO
16 BE IMPOSED.—In the event of an affirmative determina-
17 tion under subsection (a)(1)(A)(i) or (a)(1)(A)(ii), the
18 President shall impose sanctions described under sub-
19 section (c) on the foreign person that engaged in, facili-
20 tated, or solicited the conduct that is the subject of the
21 determination, on other persons as the President deter-
22 mines should be subject to sanctions because they are re-
23 lated to that person, and on any successor of a sanctioned
24 person.

25 “(c) SANCTIONS.—

1 “(1) MANDATORY SANCTIONS.—The following
2 sanctions shall be imposed for a minimum of 2 years
3 in the event the President makes a determination
4 under subsections (a)(1)(A)(i) or (a)(1)(A)(ii):

5 “(A) If the determination is for activity re-
6 lated to missile proliferation, validated licenses
7 for items on the MTCR annex shall be denied
8 under this Act and the Export Administration
9 Act and imports of such items for such entities
10 shall be prohibited.

11 “(B) If the determination is for activity re-
12 lated to chemical or biological weapons pro-
13 liferation, validated licenses for items listed by
14 the Australia Group shall be denied under this
15 Act and the Export Administration Act and im-
16 ports of such items for such entities shall be
17 prohibited.

18 “(C) The United States Government shall
19 not procure, or enter into any contract for the
20 procurement of, any services, commodities, soft-
21 ware, and technology, or other products from or
22 produced by any entity described in subsection
23 (a)(2).

24 “(2) DISCRETIONARY SANCTIONS.—In addition
25 to the sanctions described in paragraph (1), the

1 President may also take any of the actions listed in
2 paragraphs (3) and (5), if the President determines
3 that such additional measures would further the ob-
4 jectives of this section. Such additional sanctions
5 shall be proportionate to the harm the sanctioned
6 behavior has caused or will cause the national secu-
7 rity or nonproliferation interests of the United
8 States.

9 “(3) MANDATORY SANCTIONS FOR USE OF
10 CHEMICAL OR BIOLOGICAL WEAPONS.—The follow-
11 ing sanctions shall be imposed in the event the
12 President makes a determination under subsection
13 (a)(2):

14 “(A) FOREIGN ASSISTANCE.—The United
15 States Government shall terminate assistance to
16 that country under the Foreign Assistance Act
17 of 1961, except for urgent humanitarian assist-
18 ance and food or other agricultural commodities
19 or products.

20 “(B) ARMS SALES.—The United States
21 Government shall terminate—

22 “(i) sales to that country under this
23 Act of any defense articles, defense serv-
24 ices, or design and construction services;
25 and

1 “(ii) licenses for the export to that
2 country of any item on the United States
3 Munitions List.

4 “(C) ARMS SALES FINANCING.—The
5 United States Government shall terminate all
6 foreign military financing for that country
7 under this Act.

8 “(D) DENIAL OF UNITED STATES GOVERN-
9 MENT CREDIT OR OTHER FINANCIAL ASSIST-
10 ANCE.—The United States Government shall
11 deny to that country any credit, credit guaran-
12 tees, or other financial assistance by any de-
13 partment, agency, or instrumentality of the
14 United States Government, including the Ex-
15 port-Import Bank of the United States.

16 “(E) EXPORTS OF NATIONAL SECURITY-
17 SENSITIVE ITEMS.—The authorities of this Act
18 shall be used to prohibit the export to that
19 country of any items controlled for non-
20 proliferation, regional stability, or national se-
21 curity reasons.

22 “(4) ADDITIONAL SANCTIONS IF CERTAIN CON-
23 DITIONS NOT MET.—Unless, within 3 months after
24 making a determination pursuant to subsection
25 (a)(2) with respect to a foreign government, the

1 President determines and certifies, in writing, to the
2 Congress that—

3 “(A) the government is no longer using
4 chemicals or biological weapons in violation of
5 international law or using lethal chemicals or
6 biological weapons against its own nationals;

7 “(B) the government has provided reliable
8 assurances that it will not, in the future, en-
9 gage in any such activities; and

10 “(C) the government is willing to allow on-
11 site inspections by United Nations observers or
12 other internationally-recognized, impartial ob-
13 servers, or other reliable means exist, to ensure
14 that government is not using chemicals or bio-
15 logical weapons in violation of international law
16 and is not using lethal chemical or biological
17 weapons against its own nationals, then the
18 President, after consultation with the Congress,
19 shall impose on that country the sanctions set
20 forth in at least 3 of subparagraphs (A)
21 through (F) of paragraph (5).

22 “(5) ADDITIONAL SANCTIONS FOR USE OF
23 CHEMICAL OR BIOLOGICAL WEAPONS.—The sanc-
24 tions referred to in paragraph (4) are the following:

1 “(A) MULTILATERAL DEVELOPMENT BANK
2 ASSISTANCE.—The United States Government
3 shall oppose, in accordance with section 701 of
4 the International Financial Institutions Act (22
5 U.S.C. 262d), the extension of any loan or fi-
6 nancial or technical assistance to that country
7 by international financial institutions.

8 “(B) BANK LOANS.—The United States
9 Government shall prohibit any United States
10 bank from making any loan or providing any
11 credit to the government of that country, except
12 for loans or credits for the purpose of purchas-
13 ing food or other agricultural commodities or
14 products.

15 “(C) FURTHER EXPORT RESTRICTIONS.—
16 The authorities of this Act may be used to pro-
17 hibit exports to the country of all other items
18 (excluding food and other agricultural commod-
19 ities and products).

20 “(D) IMPORT RESTRICTIONS.—Restriction
21 shall be imposed on the importation into the
22 United States of articles (which may include pe-
23 troleum or any petroleum product) that are the
24 growth, product, or manufacture of that coun-
25 try.

1 “(E) DIPLOMATIC RELATIONS.—The
2 President shall use constitutional authorities to
3 downgrade or suspend diplomatic relations be-
4 tween the United States and the government of
5 that country.

6 “(F) PRESIDENTIAL ACTION REGARDING
7 AVIATION.—

8 “(i)(I) The President is authorized to
9 notify the government of a country with re-
10 spect to which the President has made a
11 determination, pursuant to subsection
12 12(a), regarding intention to suspend the
13 authority of foreign air carriers owned or
14 controlled by the government of that coun-
15 try to engage in foreign air transportation
16 to or from the United States.

17 “(II) Within 10 days after the date of
18 notification of a government under
19 subclause (I), the Secretary of Transpor-
20 tation shall take all steps necessary to sus-
21 pend at the earliest possible date the au-
22 thority of any foreign air carrier owned or
23 controlled, directly or indirectly, by that
24 government to engage in foreign air trans-
25 portation to or from the United States,

1 notwithstanding any agreement relating to
2 air services.

3 “(ii)(I) The President may direct the
4 Secretary of State to terminate any air
5 service agreement between the United
6 States and a country with respect to which
7 the President has made a determination
8 pursuant to subsection (a), in accordance
9 with the provisions of that agreement.

10 “(II) Upon termination of an agree-
11 ment under this clause, the Secretary of
12 Transportation shall take such steps as
13 may be necessary to revoke at the earliest
14 possible date the right of any foreign air
15 carrier owned, or controlled, directly or in-
16 directly, by the government of that country
17 to engage in foreign air transportation to
18 or from the United States.

19 “(iii) The Secretary of Transportation
20 may provide for such exceptions from
21 clauses (i) and (ii) as the Secretary consid-
22 ers necessary to provide for emergencies in
23 which the safety of an aircraft or its crew
24 or passengers is threatened.

1 “(iv) for purposes of this subpara-
2 graph, the terms ‘air transportation’, ‘air
3 carrier’, ‘foreign air carrier’, and ‘foreign
4 air transportation’ have the meanings such
5 terms have under section 101 of the Fed-
6 eral Aviation Act of 1958 (49 U.S.C. App.
7 1301).

8 “(d) DEFERRAL AND LIMITATION.—

9 “(1) The President may delay the making of a
10 determination under subsection (a) or the imposition
11 of sanctions in order to protect—

12 “(A) ongoing criminal investigations; or

13 “(B) sensitive intelligence sources and
14 methods which are being used to acquire fur-
15 ther information on the proliferation of weapons
16 of mass destruction, their delivery systems, or
17 advanced conventional weapons.

18 The President shall exercise this authority only when
19 the President determines that nonproliferation objec-
20 tives do not outweigh the need to delay the imposi-
21 tion of sanctions to avoid compromising the criminal
22 investigation or intelligence sources and methods in-
23 volved. The President shall proceed when the basis
24 for the delay no longer exists.

1 “(2) The President may delay the imposition of
2 sanctions for up to 180 days if the United States is
3 engaged in diplomatic efforts and consultations with
4 the objective of—

5 “(A) curtailing the policies and conduct of
6 the government or person in the country of
7 weapons activity determined to have engaged in
8 the sanctioned conduct; or

9 “(B) obtaining from the government with
10 effective jurisdiction over the sanctioned person
11 appropriate sanctions against such person or
12 the initiation of legal process to impose such
13 sanctions.

14 If such diplomatic efforts and consultations succeed
15 (i) in curtailing the conduct of the government or
16 person engaged in the sanctioned conduct, or (ii) in
17 obtaining enforcement action in accordance with
18 subparagraph (B), the President shall not be re-
19 quired to apply or maintain sanctions under this sec-
20 tion.

21 “(3) The President should seek multilateral
22 support for sanctions against activity covered by this
23 section. If multilateral sanctions are achieved that
24 the President determines will be more effective than
25 unilateral sanctions in furthering the national secu-

1 rity or nonproliferation objectives of the United
2 States, the President shall not be required to exer-
3 cise the authority in this section in a manner incon-
4 sistent with such multilateral sanctions.

5 “(e) EXCEPTIONS.—The President shall not be re-
6 quired to apply or maintain sanctions under this section—

7 “(1) in the case of procurement of defense arti-
8 cles or defense services—

9 “(A) under existing contracts or sub-
10 contracts, including the exercise of options for
11 production quantities to satisfy United States
12 operational military requirements;

13 “(B) if the President determines that the
14 person to which the sanctions would otherwise
15 be applied is a sole source supplier of the de-
16 fense articles or services, that the defense arti-
17 cles or services are essential, and that alter-
18 native sources are not readily or reasonably
19 available; or

20 “(C) if the President determines that such
21 articles or services are essential to the national
22 security under defense coproduction agree-
23 ments;

24 “(2) to the import of—

1 “(A) products or services provided under
2 contracts entered into before the date on which
3 the President publishes notice of intention to
4 impose sanctions; or

5 “(B)(i) spare parts;

6 “(ii) component parts, but not finished
7 products, essential to United States products or
8 production;

9 “(iii) information and technology essential
10 to United States products or production;

11 “(iv) routine servicing and maintenance of
12 products, to the extent that alternative sources
13 are not readily or reasonably available;

14 “(3) to medical or other humanitarian items;

15 “(4) to any transaction subject to the reporting
16 requirements of title V of the National Security Act
17 of 1947; or

18 “(5) when the President determines, categori-
19 cally or on a case-by-case basis, that the application
20 of sanctions to bar performance of a contract or
21 agreement entered into before the date of the im-
22 position of sanctions is not necessary to achieve the
23 national security or nonproliferation objectives of the
24 United States and would be contrary to the national
25 interest.

1 “(f) TERMINATION OF SANCTIONS FOR USING CHEM-
2 ICAL OR BIOLOGICAL WEAPONS.—During the minimum 2
3 years period of the mandatory sanctions imposed pursuant
4 to a determination under subsection (a)(2), such sanctions
5 may be removed if the President determines and so cer-
6 tifies to the Congress that—

7 “(1) the government of that country has pro-
8 vided reliable assurances that it will not use chemi-
9 cal or biological weapons in violation of international
10 law and will not use lethal chemical or biological
11 weapons against its own nationals;

12 “(2) that government is not making prepara-
13 tions to use chemical or biological weapons in viola-
14 tion of international law or to use lethal chemical or
15 biological weapons against its own nationals;

16 “(3) that government is willing to allow on-site
17 inspections by United Nations observers or other
18 internationally-recognized, impartial observers to
19 verify that it is not making preparations to use
20 chemical or biological weapons in violation of inter-
21 national law or to use lethal chemical or biological
22 weapons against its own nationals, or other reliable
23 means exist to verify that it is not making such
24 preparations; and

1 “(4) that government is making restitution to
2 those affected by any use of chemical or biological
3 weapons in violation of international law or by any
4 use of lethal chemical or biological weapons against
5 its own nationals.

6 “(g) WAIVER.—

7 “(1) CRITERION FOR WAIVER.—The President
8 may waive or partially waive the application of any
9 sanction imposed on any entity pursuant to this sec-
10 tion, if the President determines and certifies to
11 Congress that such waiver is important to the na-
12 tional interests of the United States.

13 “(2) NOTIFICATION OF AND REPORT TO CON-
14 GRESS.—If the President decides to exercise the
15 waiver authority provided in paragraph (1), the
16 President shall so notify the Congress not less than
17 20 days before the waiver takes effect. Such notifica-
18 tion shall include a report stating the reasons for ex-
19 ercise of the waiver authority.

20 “(h) REGULATORY IMPLEMENTATION OF SANC-
21 TIONS.—For items subject to the jurisdiction of the Sec-
22 retary of Commerce under the Export Administration Act,
23 sanctions shall be implemented in regulations issued by
24 the Secretary and shall specify the scope of products and
25 entities. For items subject to the jurisdiction of the Sec-

1 retary of State under this Act, sanctions shall be imple-
2 mented in regulations issued by the Secretary of State and
3 shall specify the scope of products and entities.’’.

4 **SEC. 13. ANNUAL REPORT.**

5 (a) CONTENTS.—Not later than March 1 of each
6 year, the Secretary shall submit to the Congress a report
7 on the administration of this Act during the preceding cal-
8 endar year. All agencies shall cooperate fully with the Sec-
9 retary in providing information for such report. Such re-
10 port shall include detailed information on—

11 (1) the implementation of the policies set forth
12 in section 3, including delegations of authority by
13 the President as provided in section 4(e), consulta-
14 tions with the technical advisory committees estab-
15 lished pursuant to section 4(g), and any changes in
16 the exercise of the authorities contained in sections
17 5(a), 6(a), and 7(a);

18 (2) adjustments to multilateral export controls;
19 activities involving the license free zones authorized
20 by section 5(f)(4), and determinations under section
21 5(1), the criteria used to make such determinations,
22 the removal of any export controls under such sec-
23 tion, and any evidence demonstrating a need to
24 maintain export controls notwithstanding foreign
25 availability;

1 (3) the effectiveness of unilateral export con-
2 trols imposed under section 5, and any adjustments
3 thereto; and embargoes imposed, maintained, or re-
4 moved in accordance with section 5, including de-
5 scriptions of each embargo and the rationale for im-
6 posing, maintaining, or removing such embargoes;

7 (4) short supply controls and monitoring in ac-
8 cordance with section 6;

9 (5) organizational and procedural changes un-
10 dertaken in furtherance of the policies set forth in
11 this Act, including changes to increase the efficiency
12 of the export licensing process and to fulfill the re-
13 quirements of section 8, including an accounting of
14 appeals received, and actions taken pursuant thereto
15 under section 8(h);

16 (6) violations under section 9, enforcement ac-
17 tivities under section 10, and any reviews under-
18 taken in furtherance of the policies of this Act;

19 (7) the issuance of regulations under the au-
20 thority of this Act;

21 (8) the results, in as much detail as may be in-
22 cluded consistent with multilateral arrangements
23 and the need to maintain the confidentiality of pro-
24 prietary information and classified information, of
25 the reviews of the Commerce Control List, and any

1 revisions to the Commerce Control List resulting
2 from such reviews, required by section 11; and

3 (9) the imposition or removal of sanctions
4 against certain entities and foreign countries in ac-
5 cordance with section 12.

6 (b) REPORT ON CERTAIN EXPORT CONTROLS.—To
7 the extent that the President determines that the policies
8 set forth in section 3 require the control of the export of
9 items other than those subject to multilateral controls, or
10 require more stringent controls than the multilateral re-
11 gimes, the President shall include in each annual report
12 the reasons for the need to impose, or to continue to im-
13 pose, such controls and the estimated domestic economic
14 impact on the various industries affected by such controls.

15 **SEC. 14. DEFINITIONS.**

16 As used in this Act:

17 (1) AFFILIATES.—The term “affiliates” in-
18 cludes both governmental entities and commercial
19 entities that are controlled in fact by target coun-
20 tries.

21 (2) AUSTRALIA GROUP (“AG”).—The term
22 “Australia Group” or “AG” means the multilateral
23 arrangement in which the United States participates
24 that seeks to prevent the proliferation of chemical
25 and biological weapons.

1 (3) BIOLOGICAL WEAPONS CONVENTION.—The
2 term “Biological Weapons Convention” refers to the
3 “Convention on the Prohibition of the Development,
4 Production and Stockpiling of Bacteriological (Bio-
5 logical) and Toxin Weapons and on Their Destruc-
6 tion of 1972”.

7 (4) CHEMICAL WEAPONS CONVENTION.—The
8 term “Chemical Weapons Convention” refers to the
9 Convention on the Prohibition of the Development,
10 Production, Stockpiling and Use of Chemical Weap-
11 ons and on Their Destruction of 1992.

12 (5) COMMODITY.—The term “commodity”
13 means any article, natural or manmade substance,
14 material, supply or manufactured product, including
15 inspection of test equipment, and excluding technical
16 data.

17 (6) COORDINATING COMMITTEE (“COCOM”).—
18 The term “Coordinating Committee” or “COCOM”
19 means the multilateral organization in which the
20 United States participates that cooperates in re-
21 stricting transfers of strategic items to certain coun-
22 tries.

23 (7) EXPORT.—The term “export” means—
24 (A) an actual shipment, transfer, or trans-
25 mission of items out of the United States;

1 (B) a transfer to any person of items ei-
2 ther within the United States or outside of the
3 United States or to an end user, end use, or
4 destination with the knowledge or intent that
5 the items will be shipped, transferred, or trans-
6 mitted outside the United States; or

7 (C) unless otherwise clear from the con-
8 text, the term “export” includes the term “reex-
9 port”:

10 *Provided*, That the Secretary may further define the term
11 by regulation to include, among other concepts, that a
12 transfer of items in the United States to an embassy or
13 affiliate of a country is an export to the country, that dis-
14 closure of technology to a foreign national is a deemed
15 export to his or her home country, and that transfer of
16 effective control from one country to another over a sat-
17 ellite above the earth is an export from one country to
18 another.

19 (8) FACILITATING THE ACTIVITY.—The term
20 “facilitating the activity” includes but is not limited
21 to, acting as a freight forwarder, shipper, designated
22 export or import agent, consignee, purchasing agent,
23 marketing agent, manufacturer, assembler, designer,
24 financier, or end user with respect to the services or
25 items to be exported, transferred, or provided.

1 (9) FINANCIAL TRANSACTIONS.—The term “fi-
2 nancial transactions” means any transactions involv-
3 ing the exchange, transfer, crediting, debiting, de-
4 posit, withdrawal, or payment of currency, securities,
5 debt, credit, checks, other monetary instruments,
6 precious metals or minerals, or other items of value
7 whether physically or by electronic means. The term
8 is intended to be interpreted broadly to include such
9 transactions as the opening or drawing down of let-
10 ters of credit, the extension of a loan, the receipt of
11 payment, or the use of credit cards.

12 (10) ITEM.—The term “item” means any com-
13 modity, technology, or software.

14 (11) MISSILE.—The term “missile” means any
15 missile system or component listed in category I of
16 the MTCR Annex, and any other unmanned delivery
17 system or component of similar capability, as well as
18 the specially designed production facilities for these
19 systems.

20 (12) MISSILE TECHNOLOGY CONTROL REGIME
21 (“MTCR”).—The term “Missile Technology Control
22 Regime” or “MTCR” means the policy statement
23 and Guidelines between the United States, the
24 United Kingdom, the Federal Republic of Germany,
25 France, Italy, Canada, and Japan, announced on

1 April 16, 1987, to restrict sensitive missile-related
2 transfers based on the MTCR Annex, and any
3 amendments to the Annex or Guidelines.

4 (A) MTCR ADHERENT.—The term
5 “MTCR adherent” means a country that is a
6 member of the MTCR or that, pursuant to an
7 international understanding to which the Unit-
8 ed States is a party, controls MTCR equipment
9 or technology in accordance with the criteria
10 and standards set forth in the MTCR.

11 (B) MTCR ANNEX.—The term “MTCR
12 Annex” means the Equipment and Technology
13 Annex of the MTCR and any amendments
14 thereto.

15 (13) MULTILATERAL CONTROL.—The term
16 “multilateral control” means a licensing requirement
17 exercised by the United States and at least one
18 other nation.

19 (14) NUCLEAR SUPPLIERS’ GROUP (“NSG”).—
20 The term “Nuclear Suppliers’ Group” or “NSG”
21 means the multilateral arrangement in which the
22 United States participates whose purpose is to re-
23 strict the transfers of items with relevance to the
24 nuclear fuel cycle and/or nuclear explosive applica-
25 tions.

1 (15) PERSON.—The term “person” includes—

2 (A) the single and plural of any individual,
3 corporation, partnership, business association,
4 society, trust, organization, or other group cre-
5 ated or organized under the laws of a country;
6 or

7 (B) any government, governmental body,
8 corporation, trust, agency, department, division,
9 or group operating as a business enterprise.

10 (16) PROTOCOL ON BIOLOGICAL WARFARE.—

11 The term “Protocol on Biological Warfare” refers to
12 the Protocol for the Prohibition of the Use in War
13 of Asphyxiating, Poisonous or Other Gases, and of
14 Bacteriological Methods of Warfare of 1925.

15 (17) REGIME, MULTILATERAL EXPORT CON-

16 TROL REGIME, MULTILATERAL REGIME.—The terms

17 “regime” and “multilateral export control regime”

18 and “multilateral regime” each means an arrange-

19 ment of two or more countries to which the United

20 States is a party or which the United States would

21 seek to create or join and brought together for the

22 purpose of curtailing access to controlled items by

23 target countries by means of cooperative export con-

24 trols.

1 (18) REEXPORT.—The term “reexport” means
2 the shipment, transfer, transshipment, or diversion of
3 items from one foreign country to another.

4 (19) SECRETARY.—The term “Secretary”
5 means the Secretary of Commerce.

6 (20) TARGET COUNTRY.—The term “target
7 country” means a country for which it is the objec-
8 tive under this Act to deny or attempt to deny ac-
9 cess to controlled items or a country from which the
10 United States distances itself by means of a unilat-
11 eral export control adopted under this Act.

12 (21) TECHNOLOGY.—The term “technology”
13 means specific information required for the “devel-
14 opment”, “production”, or “use” of a product. The
15 information takes the form of “technical data” or
16 “technical assistance”. Controlled “technology” is
17 defined in the General Technology Note and in the
18 Commerce Control List.

19 (22) UNILATERAL CONTROL.—The term “uni-
20 lateral control” means a license requirement that is
21 not multilaterally agreed to by two or more coun-
22 tries.

23 (23) UNITED STATES.—The term “United
24 States” means the States of the United States, the
25 District of Columbia, and any commonwealth, terri-

1 tory, dependency, or possession of the United States,
2 and includes the Outer Continental Shelf, as defined
3 in Section 2(a) of the Outer Continental Shelf
4 Lands Act (43 U.S.C. 1331(a)).

5 (24) UNITED STATES PERSON.—The term
6 “United States person” means any United States
7 citizen, resident, national (other than an individual
8 resident outside the United States and employed by
9 other than a United States person), or person within
10 the United States, any domestic concern (including
11 any permanent domestic establishment of any for-
12 eign concern) and any foreign subsidiary or affiliate
13 (including any permanent foreign establishment) of
14 any domestic concern which is controlled in fact by
15 such domestic concern, as determined under regula-
16 tions of the President.

17 (25) WEAPONS OF MASS DESTRUCTION.—The
18 term “weapons of mass destruction” means any
19 chemical or biological weapons or nuclear explosive
20 devices.

21 **SEC. 15. EFFECTS ON OTHER ACTS.**

22 (a) COMMODITY JURISDICTION.—

23 (1) COORDINATION OF CONTROLS.—The au-
24 thority granted under this Act and under section 38
25 of the Arms Export Control Act (22 U.S.C. 2778)

1 shall be exercised by each licensing authority in such
2 a manner as to achieve effective coordination be-
3 tween the dual use and munitions licensing systems
4 and share information regarding the trustworthiness
5 of parties.

6 (2) ELIMINATION OF OVERLAPPING CON-
7 TROLS.—No item may be included on both the Com-
8 merce Control List and the United States Munitions
9 List after the effective date of this Act.

10 (3) COMMODITY JURISDICTION DISPUTE RESO-
11 LUTION.—Under procedures to be established by the
12 President, disputes regarding conflicting claims of
13 jurisdiction between the Commerce Control List and
14 the United States Munitions List shall be resolved in
15 a timely fashion by the Department of State, in con-
16 sultation with other agencies. Consultations shall be
17 carried out through committees chaired by rep-
18 resentatives of the Department of State at the As-
19 sistant Secretary or Under Secretary level. The pro-
20 cedures of the committees shall allow the initiation
21 of matters by either the States Department or other
22 agencies including in response to requests to the De-
23 partments of State and Commerce. Consultation
24 procedures within the committees shall provide for
25 interagency meetings to permit the free exchange of

1 views regarding jurisdictional issues. Disputes that
2 cannot be resolved may be referred to the President
3 by the Secretary of State, the Secretary of Defense,
4 or the Secretary of Commerce.

5 (b) IN GENERAL.—Except as otherwise provided in
6 this Act, nothing contained in this Act shall be construed
7 to modify, repeal, supersede, or otherwise affect the provi-
8 sions of any other laws authorizing control over exports
9 of any commodity.

10 (c) AMENDMENTS TO THE INTERNATIONAL EMER-
11 GENCY ECONOMIC POWERS ACT.—

12 (1) The International Emergency Economic
13 Powers Act (50 U.S.C. 1707) is amended by adding
14 after the last section the following section 208:

15 **“SEC. 208. CONFIDENTIALITY OF INFORMATION.**

16 **“(a) EXEMPTIONS FROM DISCLOSURE.—**Information
17 obtained under this Act may be withheld only to the extent
18 permitted by statute, except that information submitted,
19 obtained or considered in connection with an application
20 for an export license or other export authorization under
21 this Act, including the export license or other export au-
22 thorization itself, classification requests, information ob-
23 tained during the course of a foreign availability assess-
24 ment, information or evidence obtained in the course of
25 any investigation, and information obtained or furnished

1 in connection with multilateral agreements, treaties, or ob-
2 ligations under this Act shall not be subject to disclosure
3 under section 552 of title 5, United States Code, and shall
4 be withheld from public disclosure unless the release of
5 such information is determined by the Secretary to be in
6 the national interest.

7 “(b) INFORMATION TO CONGRESS AND GAO.—

8 “(1) IN GENERAL.—Nothing in this Act shall
9 be construed as authorizing the withholding of infor-
10 mation from the Congress or from the General Ac-
11 counting Office.

12 “(2) AVAILABILITY TO THE CONGRESS.—

13 “(A) IN GENERAL.—All information ob-
14 tained at any time under this Act regarding the
15 control of exports, including any report or li-
16 cense application required under this Act, shall
17 upon request be made available to the Commit-
18 tee on Foreign Affairs and the Subcommittee
19 on International Economic Policy and Trade of
20 the House of Representatives and the Commit-
21 tee on Banking, Housing, and Urban Affairs
22 and the Subcommittee on International Finance
23 and Monetary Policy of the Senate. Each of the
24 above designated committees and subcommit-
25 tees may provide other members of Congress in-

1 formation obtained under this authority pro-
2 vided that such information may not be further
3 disclosed except upon a finding made under the
4 following subparagraph.

5 “(B) PROHIBITION ON FURTHER DISCLO-
6 SURE.—No such committee or subcommittee, or
7 member thereof, and no other committee, sub-
8 committee, or member of Congress shall dis-
9 close any information obtained under this Act
10 or previous Acts regarding the control of ex-
11 ports which is submitted pursuant to this sub-
12 section unless one of the above described full
13 committees determines that the withholding of
14 that information is contrary to the national
15 interest.

16 “(3) AVAILABILITY TO THE GAO.—

17 “(A) IN GENERAL.—Notwithstanding para-
18 graph (1), information referred to in subpara-
19 graph (B) shall, consistent with the protection
20 of intelligence, counterintelligence, and law en-
21 forcement sources, methods, and activities, as
22 determined by the agency that originally ob-
23 tained the information, and consistent with the
24 provisions of section 313 of the Budget and Ac-
25 counting Act of 1921, be made available only by

1 the Agency, upon request, to the Comptroller
2 General of the United States or to any officer
3 or employee of the General Accounting Office
4 authorized by the Controller General to have
5 access to such information.

6 “(B) PROHIBITION ON FURTHER DISCLO-
7 SURES.—No officer or employee of the General
8 Accounting Office shall disclose, except to the
9 Congress in accordance with this paragraph,
10 any such information which is submitted on a
11 confidential basis and from which any individ-
12 ual can be identified.

13 “(c) PENALTIES FOR DISCLOSURE OF CONFIDEN-
14 TIAL INFORMATION.—Any officer or employee of the Unit-
15 ed States, or any department or agency thereof, who pub-
16 lishes, divulges, discloses, or makes known in any manner
17 or to any extent not authorized by law any information
18 coming to him in the course of his or her employment or
19 official duties or by reason of any examination or inves-
20 tigation made by, report or record made to or filed with,
21 such department or agency, or officer or employee thereof,
22 which information is exempt from disclosure under this
23 subsection, shall be fined not more than \$1,000, or impris-
24 oned not more than one year, or both, and may be removed

1 from office or employment and shall be subject to a civil
2 penalty of not more than \$1,000.”.

3 (2) Section 206 of the International Emergency
4 Economic Powers Act (50 U.S.C. 1705) is amended
5 by inserting “or attempts to violate,” after “vio-
6 lates” in subsection (a); and by inserting “or will-
7 fully attempts to violate,” after “violates” in sub-
8 section (b).

9 (d) CIVIL AIRCRAFT EQUIPMENT.—Except as nec-
10 essary to comply with international obligations under the
11 International Emergency Economic Powers Act (Public
12 Law 95–223) (50 U.S.C. 1701 et seq.) or the United Na-
13 tions Participation Act of 1945, as amended (Public Law
14 79–264 (22 U.S.C. 287 et seq.), notwithstanding any
15 other provision of law, any product (1) which is standard
16 equipment, certified by the Federal Aviation Administra-
17 tion, in civil aircraft and is an integral part of such air-
18 craft, and (2) which is to be exported to a country other
19 than a controlled country, shall be subject to export con-
20 trols exclusively under this Act. Any such product shall
21 not be subject to controls under section 38(b)(2) of the
22 Arms Export Control Act (22 U.S.C. 2778(b)(2)).

23 (e) NUCLEAR NONPROLIFERATION CONTROLS.—

24 (1) Nothing in section 5 of this Act shall be
25 construed to supersede the procedures published by

1 the President pursuant to section 309(c) of the Nu-
2 clear Non-Proliferation Act of 1978 (42 U.S.C.
3 2139a(c)).

4 (2) The procedures published by the President
5 pursuant to section 309(c) of the Nuclear Non-Pro-
6 liferation act of 1978 (42 U.S.C. 2139a(c)) shall be
7 superseded to the extent they are inconsistent with
8 the provisions of section 8 of this Act.

9 (f) CONFORMING AMENDMENT TO THE ARMS EX-
10 PORT CONTROL ACT.—

11 (1) Section 73 of the Arms Export Control Act
12 (Public Law 90–626), as amended by section 1703
13 of the National Defense Authorization Act of 1991
14 (Public Law 101–510) (U.S.C. 2797B), is hereby re-
15 pealed.

16 (2) Section 81 of the Arms Export Control Act
17 (Public Law 90–626), as amended by section 305 of
18 the Miscellaneous Foreign Affairs Act of 1991 (Pub-
19 lic Law 102–182) (22 U.S.C. 2798), is hereby re-
20 pealed.

21 (3) Sections 306, 307, 308, and 309(b) of the
22 Chemical and Biological Weapons Control and War-
23 fare Elimination Act of 1991 (Public Law 102–182)
24 (22 U.S.C. 5604, 5605, and 5606) are hereby re-
25 pealed.

1 (4) Section 74 of the Arms Export Control Act
2 (Public Law 90–626), as amended by section 1703
3 of the National Defense Authorization Act for Fiscal
4 Year 1991 (Public Law 101–510) (22 U.S.C. 2794c)
5 is amended by redesignating “Section 74” as “Sec-
6 tion 73”. It is further amended to read as follows:

7 **“SEC. 73. DEFINITIONS.**

8 “For purposes of this chapter—

9 “(1) AUSTRALIA GROUP (‘AG’).—The term ‘Aus-
10 tralia Group’ or ‘AG’ means the multilateral ar-
11 rangement in which the United States participates
12 that seeks to prevent the proliferation of chemical
13 and biological weapons;

14 “(2) BIOLOGICAL WEAPONS CONVENTION.—The
15 term ‘Biological Weapons Convention’ refers to the
16 Convention on the Prohibition of the Development,
17 Production and Stockpiling of Bacteriological (Bio-
18 logical) and Toxin Weapons and on Their Destruc-
19 tion of 1972”;

20 “(3) CHEMICAL WEAPONS CONVENTION.—The
21 term ‘Chemical Weapons Convention’ refers to the
22 Convention on the Prohibition of the Development,
23 Production, Stockpiling and Use of Chemical Weap-
24 ons and on Their Destruction of 1992;

1 “(4) FACILITATING THE ACTIVITY.—The term
2 ‘facilitating the activity’ includes but is not limited
3 to, acting as a freight forwarder, shipper, designated
4 export or import agent, consignee, purchasing agent,
5 marketing agent, manufacturer, assembler, designer,
6 financier, or end use with respect to the services or
7 items to be exported, transferred, or provided;

8 “(5) FINANCIAL TRANSACTIONS.—The term ‘fi-
9 nancial transactions’ means any transactions involv-
10 ing the exchange, transfer, crediting, debiting, de-
11 posit, withdrawal, or payment of currency, securities,
12 debt, credit, checks, other monetary instruments,
13 precious metals or minerals, or other items of value
14 whether physically or by electronic means. The term
15 is intended to be interpreted broadly to include such
16 transactions as the opening or drawing down of let-
17 ters of credit, the extension of a loan, the receipt of
18 payment, or the use of credit cards;

19 “(6) ITEM.—The term ‘item’ means any com-
20 modity, technology, or software;

21 “(7) MISSILE.—The term ‘missile’ means any
22 missile system or component listed in category I of
23 the MTCR Annex, and any other unmanned delivery
24 system or component of similar capability, as well as

1 the specially designed production facilities for these
2 systems;

3 “(8) MISSILE TECHNOLOGY CONTROL REGIME
4 (‘MTCR’).—The term ‘Missile Technology Control Re-
5 gime’ or ‘MTCR’ means the policy statement and
6 guidelines between the United States, the
7 United Kingdom, the Federal Republic of Germany,
8 France, Italy, Canada, and Japan, announced on
9 April 16, 1987, to restrict sensitive missile-related
10 transfers based on the MTCR Annex, and any
11 amendments to the Annex or Regime;

12 “(A) MTCR ADHERENT.—The term
13 ‘MTCR adherent’ means a country that is a
14 member of the MTCR or that, pursuant to an
15 international understanding to which the Unit-
16 ed States is a party, controls MTCR equipment
17 or technology in accordance with the criteria
18 and standards set forth in the MTCR;

19 “(B) MTCR ANNEX.—The term ‘MTCR
20 Annex’ means the Equipment and Technology
21 Annex of the MTCR and any amendments
22 thereto;

23 “(9) NUCLEAR SUPPLIERS’ GROUP (‘NSG’).—
24 The term ‘Nuclear Suppliers’ Group’ or ‘NSG’
25 means the multilateral arrangement in which the

1 United States participates whose purpose is to re-
2 strict transfers of items with sensitive nuclear appli-
3 cations;

4 “(10) PERSON.—The term ‘person’ includes—

5 “(A) the single and plural of any individ-
6 ual, corporation, partnership, business associa-
7 tion, society, trust, organization, or other group
8 created or organized under the laws of a coun-
9 try; or

10 “(B) any government, governmental body,
11 corporation, trust, agency, department, division,
12 or group operating as a business enterprise;

13 “(11) PROTOCOL ON BIOLOGICAL WARFARE.—
14 The term ‘Protocol on Biological Warfare’ refers to
15 the Protocol for the Prohibition of the Use in War
16 of Asphyxiating, Poisonous or Other Gases, and of
17 Bacteriological Methods of Warfare of 1925; and

18 “(12) WEAPONS OF MASS DESTRUCTION.—The
19 term ‘weapons of mass destruction’ means any
20 chemical or biological weapons or nuclear explosive
21 devices.”.

22 (5) Section 323 of the Foreign Relations Au-
23 thorization Act for Fiscal Years 1992–93 (Public
24 Law 102–138) is hereby repealed.

1 (g) EFFECT ON SECTION 38(e) OF THE ARMS EX-
2 PORT CONTROL ACT.—This Act modifies provisions of the
3 Export Administration Act of 1979, as amended, which
4 are incorporated by reference in section 38(e) of the Arms
5 Export Control Act (22 U.S.C. 2778(e)). The changes
6 made to such provisions shall have no effect on the admin-
7 istration and enforcement of section 38(e) of the Arms Ex-
8 port Control Act. The relevant provisions of the Export
9 Administration Act of 1979, as amended, shall continue
10 to have full force and effect for purposes of that Act.

11 (Add conforming amendments for the approximately
12 60 statutory references to the EAA in other
13 Federal statutes.)

14 **SEC. 16. AUTHORIZATION OF APPROPRIATIONS.**

15 AUTHORIZATION.—There are authorized to be appro-
16 priated to the Department of Commerce to carry out the
17 purposes of this Act—

18 (1) \$43,372,000 for fiscal year 1995, and such
19 amounts as may be necessary for fiscal year 1996;
20 and

21 (2) such additional amounts for each of the fis-
22 cal years 1995 and 1996 as may be necessary for in-
23 creases in salary, pay, retirement, other employee
24 benefits authorized by law, and other non-discre-
25 tionary costs.

1 **SEC. 17. EFFECTIVE DATE.**

2 This Act shall take effect upon the expiration of the
3 Export Administration Act of 1979.

4 **SEC. 18. SAVINGS PROVISION.**

5 (a) IN GENERAL.—All delegations, rules, regulations,
6 orders, determinations, licenses, sanctions, or other forms
7 of administrative action which have been made, issued,
8 conducted, or allowed to become effective under the Ex-
9 port Control Act of 1949, the Export Administration Act
10 of 1969, the Export Administration Act of 1979, or the
11 Arms Export Control Act and which are in effect at the
12 time this Act or the Arms Export Control Act takes effect,
13 shall continue in effect according to their terms until
14 modified, superseded, set aside, or revoked under this Act
15 or the Arms Export Control Act.

16 (b) REPEAL.—Title XVII of the National Defense
17 Authorization Act for Fiscal Year 1991 (Public Law 101–
18 510) and sections 301–308 and 309(b) of the Chemical
19 and Biological Weapons Control and Warfare Elimination
20 Act of 1991 (Public Law 102–182) and amendments to
21 these Acts are hereby repealed.

22 (c) ADMINISTRATIVE PROCEEDINGS.—This Act shall
23 not apply to any administrative proceedings commenced
24 or any application for a license made, under the Export
25 Administration Act of 1979, which is pending at the time
26 this Act takes effect.



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